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**Commissioner Woodward died on August 4, 1964.

CONTENTS

	Page
Members of the Commission	II
Tables of Commission Opinions, Initial Decisions Which Have Become Final, and General Rule Making Orders	IV
Tables of Cases Reported	V
Tables of Cases Cited	XXIII
Table of Statutes Cited	XXXI
Table of Rules of Commission Cited	XXXV
Table of Miscellaneous Citations	XXXIX
Foreword	XLI
Opinions, Decisions, and Orders	1
List of Producer Orders	1303
Index-Digest	1361
Subject-Index	1377

This volume should be cited "29 FPC———."

COMMISSION OPINIONS

Opinion No.		Page
376	Slade, Inc. (Operator), et al., docket No. G–19986, et al	11
377	United Fuel Gas Co., et al., docket No. CP61–107	90
378	Texas Eastern Transmission Corp., et al., docket No. G–12446, et al	249
379	Southern Natural Gas Co., docket No. G–20509, et al	323
379–A	Southern Natural Gas Co., docket No. G–20509, et al	779
380	Pennsylvania Power & Light Co., project No. 2268	468
381	Pacific Power & Light Co., project No. 2082	478
382	Shell Oil Co., et al., docket No. RI61–515	498
382–A	Shell Oil Co., et al., docket No. RI61–515	851
383	Texaco Seaboard Inc., et al., docket No. CI61–118, et al	593
384	South Carolina Electric & Gas Co., docket No. E–6468	624
385	Northern Natural Gas Co., et al., docket No. G–12153, et al	689
386	Grant City, Mo., City of, et al., docket No. CP62–303, et al	754
387	American Louisiana Pipe Line Co., et al., docket No. G–18419, et al	932
388	Northern Natural Gas Co., docket No. G–2409	1025
389	Kansas-Nebraska Natural Gas Co., Inc., docket No. CP62–215	1058
390	El Paso Natural Gas Co., et al., docket No. G–17849, et al	1175
391	Pan American Petroleum Corp., (Operator), et al., docket No. RI61–532, et al	1216
392	Sunray DX Oil Co., docket No. CI61–1153	1295

INITIAL DECISIONS WHICH HAVE BECOME FINAL

Clay City, Ill., Village of, docket No. CP63–49	1087
East Tennessee Natural Gas Co., docket No. CP61–199	297
El Paso Natural Gas Co., et al., docket No. CP62-265, et al	984
Hamon, Jake L., et al., docket No. G–16747, et al	784
Ohio Fuel Gas Co., The, docket No. CP62–153	1134

GENERAL RULE MAKING ORDERS

Order No.		
252–A	Docket No. R–212	382
260	Docket No. R–223	42
260–A	Docket No. R–223	777
261	Docket No. R–231	62
262	Docket No. R–225	309
263	Docket No. R–233	412
264	Docket No. R–234	589
265	Docket No. R–235	549
266	Docket No. R–236	551
267	Docket No. R–237	590
268	Docket No. R–221	818

TABLE OF CASES REPORTED

Page

*Aikman, Claude E., et al., docket No. RI61–515 ..... 498, 851
Alabama Power Co., project No. 2146 39
Alabama Power Co., project No. 2165 1289
Alabama-Tennessee Natural Gas Co., et al., docket No. CP62–133, et al 7, 835, 1100
Alabama-Tennessee Natural Gas Co., docket No. CP62–197 .. 414
Albany Oil and Gas Co., Inc., The, docket No. CP63–164 ... 703
Algonquin Gas Transmission Co., docket No. CP60–124, et al. 1011
Algonquin Gas Transmission Co., et al., docket No. CP60–124, et al 283
Algonquin Gas Transmission Co., et al., docket No. CP63–97, et al 536
Allegan, City of, project No. 785 1150
Allied Gas Co., et al., docket No. CP62–132, et al 7, 835
Amerada Petroleum Corp., docket No. G–9385, et al 204
Amerada Petroleum Corp., et al., docket No. CI60–688, et al .. 223
Amerada Petroleum Corp., et al., docket No. CI62–1544, et al. 171, 218
*Amere Gas Utilities Co., et al., docket No. CP61–107 ..... 90, 456
Amere Gas Utilities Co., docket No. CP63–179 558
American Gas Co. of Wisconsin, Inc., et al., docket No. CP63–34, et al 2, 1109
American Gas Pipeline Co., et al., docket No. CP63–73, et al .. 271
American Louisiana Pipe Line Co., et al., docket No. G–2306, et al 828
*American Louisiana Pipe Line Co., et al., docket No. G–18419, et al 932
American Louisiana Pipe Line Co., docket No. CP63–260 1150
American Louisiana Pipe Line Co., et al., docket No. CP63–279 1251
Appalachian Power Co., docket No. E–6900 383
Appalachian Power Co., project No. 2317 445
*Area Rate Proceeding, et al., docket No. AR61–1, et al 11, 408, 588, 737, 1101
Area Rate Proceeding, et al., docket No. AR61–2, et al 116, 223, 441, 981
Arkansas Louisiana Gas Co., docket No. G–13910, et al 436
Arkansas Louisiana Gas Co., et al., docket No. CP61–163, et al 8
Arkansas Louisiana Gas Co., docket No. CP62–219 ..... 226, 1242
Arkansas Louisiana Gas Co., docket No. CP63–94 188

*Designates case as an opinion or decision.

Page

Arkansas Louisiana Gas Co., docket No. CP63–95 190
Arkansas-Missouri Power Co., et al., docket No. CP62–20, et al. 283
Arkansas Power & Light Co., docket No. E–7090 744
Associated Oil and Gas Co., et al., docket No. RI62–420, et al 59
*Atlantic Refining Co., The, et al., docket No. G–17571, et al .. 1175
Atlantic Refining Co., The, et al., docket No. CI61–450, et al. 223
Atlantic Refining Co., The, et al., docket No. CI62–146, et al .. 730, 1172
Atlantic Refining Co., The, docket No. CI63–576 384
Atlantic Seaboard Corp., et al., docket No. G–16401, et al ... 1102
Atlantic Seaboard Corp., docket No. G–17774 385
*Atlantic Seaboard Corp., et al., docket No. CP61–107 ..... 90, 456
Ausman, Earle V., et al., project No. 2314 198
Bailey, Bishop Lyle, et al., docket No. E–6788, et al 183
Barnhart, Paul F., et al., docket No. RI61–359, et al 1146
Bass, Perry R. (Operator), et al. (Formerly Sid W. Richardson d/b/a Richardson & Bass (Operator), et al.), docket No. G–17399, et al 472
Bass, Perry R. (Formerly Richardson & Bass), et al., docket No. CI61–714, et al 223
Bennett, Mills Estate, et al., docket No. RI63–308, et al 212
Black Hills Power & Light Co., docket No. E–7046 386
Black Hills Power & Light Co., docket No. E–7077 294
Black Hills Power & Light Co., docket No. E–7091 905
Bonners Ferry, Village of, project No. 1991 1115
*Brady, Austin, et al., docket No. RI62–100, et al 1216
British-American Oil Producing Co., The, et al., docket No. G–18963, et al 223
California Electric Power Co., et al., docket No. E–7072 683
California Gas Transmission Co., et al., docket No. CP61–174, et al 25
*California-Pacific Utilities Co., et al., docket No. CP62–200, et al 984
California-Pacific Utilities Co., et al., docket No. E–7079 771
California-Pacific Utilities Co., et al., project No. 749, et al ... 751
Carnegie Natural Gas Co., docket No. CP63–61 719
Carnegie Natural Gas Co., docket No. CP63–191 542
Carolina Pipeline Co., et al., docket No. RP63–4 149
Carolina Power & Light Co., docket No. E–7078 131
Casey, Illinois, City of, et al., docket No. CP62–188, et al ... 7, 835, 1100
Central Illinois Electric and Gas Co., et al., docket No. CP61–122, et al 7, 835

Page

Central Illinois Public Service Co., et al., docket No. CP62–168, et al 7, 835
Central Maine Power Co., issued January 15, 1963 80
Central Wisconsin Gas Co., docket No. G–9813 543
Chastain, M. B., (Operator), et al., issued January 25, 1963 .. 152
Chatham Strait Fish Co., project No. 2013 807
Christie, Mitchell & Mitchell Co., et al., docket No. G–15033, et al 156
Cisne, Illinois, Village of, docket No. CP63–38 82
Cities Service Co., docket No. G–16563, et al 524
Cities Service Gas Co., docket No. CP62–245 1105
Cities Service Gas Co., et al., docket No. CP63–17, et al 1159
Cities Service Gas Co., docket No. CP63–29 311
Cities Service Gas Co., docket No. CP63–59 228
Cities Service Gas Co., docket No. CP63–65 429
Cities Service Gas Co., docket No. CP63–66 422
Cities Service Gas Co., docket No. CP63–69 394
Cities Service Gas Co., docket No. CP63–83 395
Cities Service Gas Co., docket No. CP63–103 705
Cities Service Gas Co., docket No. CP63–168 698
Cities Service Gas Co., docket No. CP63–201 856
Cities Service Gas Co., docket No. CP63–216 858
Cities Service Production Co., et al., docket No. CI62–135, et al 730, 1172
City Gas Co., et al., docket No. CP61–161 277
Clay City, Illinois, Village of, docket No. CP63–49 1087
Colorado Interstate Gas Co., et al., docket No. G–16904, et al. 307
Colorado Interstate Gas Co., docket No. CP60–69 700
Colorado Interstate Gas Co., et al., docket No. CP61–143, et al 8
Colorado Interstate Gas Co., docket No. RP62–9 134
Colorado-Wyoming Gas Co., docket No. CP63–25 26
Colorado-Wyoming Gas Co., docket No. CP63–202 741
Columbia Gulf Transmission Co., et al., docket No. CP62–89, et al 929
Columbia Gulf Transmission Co., docket No. CP63–139 380
Columbia River Basin, Headwater Benefit Investigation, docket No. E–6384 238
Community Public Service Co. (A Delaware Corporation), docket No. E–7084 829
Connecticut Light and Power Co., et al., docket No. E–7082 .. 712
*Continental Oil Co., et al., docket No. G–12432, et al 249, 692
*Continental Oil Co., et al., docket No. G–13680, et al 4
Continental Oil Co., et al., docket No. G–16840, et al 273

Page

Continental Oil Co., et al., docket No. G–17649, et al..... 734
Continental Oil Co. (Operator), et al., docket No. CI61–586, et al..... 273
Continental Oil Co., et al., docket No. CI62–147, et al..... 730
Continental Oil Co., docket No. CI62–1508..... 887
Continental Oil Co., docket No. CI63–979..... 868
Continental Oil Co. (Operator), et al., issued March 18, 1963.. 525
Coos-Curry Electric Cooperative, Inc., project No. 2319..... 831
*Coppinger, W. J. (Operator), et al., docket No. RI62–100, et al..... 1216
Crescent Oil and Gas Corp., (Operator), et al., docket No. G–13511, et al..... 752
Crown Zellerbach Corp., et al., project No. 2233..... 126
*Davidson, G. S. & Norma D., et al., docket No. RI62–100, et al..... 1216
*Davis, H. H., et al., docket No. G–19672, et al..... 1175
Denver, Colorado, City and County of, project No. 2204..... 192
Duke Power Co., project No. 2232..... 808
Dupo, Illinois, Village of, docket No. CP63–57..... 859
*East Tennessee Natural Gas Co., docket No. CP61–199..... 297
Eastern Shore Natural Gas Co., docket No. CP63–113..... 313
El Paso Electric Co., docket No. E–7096..... 1212
El Paso Natural Gas Co., docket No. G–1895, et al..... 66
El Paso Natural Gas Co., docket No. G–4769, et al..... 159, 196, 569, 869
El Paso Natural Gas Co., et al., docket No. G–16235, et al.. 307
*El Paso Natural Gas Co., et al., docket No. G–17849, et al.. 1175
El Paso Natural Gas Co., docket No. G–18337, et al..... 1161
El Paso Natural Gas Co., docket No. CP60–15..... 907
El Paso Natural Gas Co., docket No. CP60–58..... 527
El Paso Natural Gas Co., docket No. CP61–248..... 1165
El Paso Natural Gas Co., et al., docket No. CP62–28, et al.. 437
El Paso Natural Gas Co., et al., docket No. CP62–63, et al.. 559
El Paso Natural Gas Co., docket No. CP62–64..... 810
El Paso Natural Gas Co., docket No. CP62–65..... 197
El Paso Natural Gas Co., docket No. CP62–233..... 811
*El Paso Natural Gas Co., et al., docket No. CP62–265, et al.. 984
El Paso Natural Gas Co., docket No. CP63–67..... 135
El Paso Natural Gas Co., docket No. CP63–68..... 27
El Paso Natural Gas Co., docket No. CP63–72..... 1
El Paso Natural Gas Co., docket No. CP63–77..... 275
El Paso Natural Gas Co., et al., docket No. CP63–126, et al... 1119
El Paso Natural Gas Co., docket No. CP63–207..... 742
El Paso Natural Gas Co., docket No. CP63–218..... 1167
El Paso Natural Gas Co., docket No. CP63–240..... 909

Page
El Paso Natural Gas Co., docket No. CP63–242 910
El Paso Natural Gas Co., docket No. CP63–250 1106
Empire District Electric Co., The, project No. 2221 67
Everett, Washington, City of, et al., project No. 2157 87
Florida Gas Transmission Co. (Formerly Houston, Texas Gas and Oil Corp), et al., docket No. CP61–161 277
Florida Gas Transmission Co. (Formerly Coastal Transmission Corp), docket No. CP61–287 415
Florida Gas Transmission Co., docket No. CP61–302 1243
Florida Gas Transmission Co., docket No. CP62–257 860
Florida Gas Transmission Co., docket No. CP63–14 130
Florida Gas Transmission Co., et al., docket No. CP63–172 694
Florida Gas Transmission Co., docket No. CP63–196 528
Florida Gas Transmission Co., et al., docket No. CP63–203 728
Florida Gas Transmission Co., docket No. CP63–231 1254
Forest Oil Corp., docket No. G–5510 160
Forest Oil Corp., et al., docket No. CI61–248, et al 223
Garkane Power Association, Inc., project No. 2219 1125
General American Oil Co. of Texas, et al., docket No. CI61–182, et al 223
George W. Graham, Inc. (Operator), et al., docket No. G–16661, et al 1042
George W. Graham, Inc., et al., docket No. RI63–432 1042
Georgia Power Co., docket No. E–7099 1049
Goodrich, R. H., et al., docket No. G–8977, et al 397
Graham, George W., (Operator), et al., issued May 24, 1963 1042
*Graham-Michaelis Drilling Co., et al., docket No. RI62–100, et al 1216
*Graham-Michaelis Drilling Co. (Operator), et al., docket No. RI62–100, et al 1216
Grand Valley Transmission Co., et al., docket No. CP63–55, et al 561
*Grant City, Missouri, City of, et al., docket No. CP62–303, et al 754
Great Plains Natural Gas Co., et al., docket No. CP63–78, et al 2
Gulf Oil Corp., et al., docket No. G–9520, et al 837
Gulf Oil Corp., et al., docket No. CI60–43, et al 293
Gulf Oil Corp., Operator, et al., docket No. CI62–1515, et al 803
Halbouty, Michael T., et al., docket No. G–17124 1090
Hammonds, George S., et al., docket No. G–16520, et al 495
Hammonds, Scott, et al., docket No. G–16521, et al 495
*Hamon, Jake L., et al., docket No. G–16747, et al 784, 1152
Hardeman-Fayette Utility District, Moscow, Tennessee, et al., docket No. CP62–183, et al 778

Page
*Hartman, W. L. (Operator), et al., docket No. RI62–100, et al. 1216
*Hawley, John B., Jr., et al., docket No. RI62–100, et al. 1216
*Hawley, John B., Jr., Trustee, et al., docket No. RI62–100, et al. 1216
Hazelton, Kansas, City of, docket No. CP63–120. 563
High Plains Natural Gas Co., docket No. CP63–226. 721
Highlands, Town of, project No. 693. 1214
Home Gas Co., et al., docket No. G–16402, et al. 1102
Home Gas Co., et al., docket No. G–17544. 180
Hope Natural Gas Co., docket No. CP63–171. 415
Hope Natural Gas Co., docket No. CP63–225. 911
Houston Natural Gas Production Co., Operator, et al., docket No. G–19730. 989
Humble Gas Transmission Co., docket No. CP63–56. 162, 889
Humble Gas Transmission Co., docket No. CP63–175. 1022
*Humble Oil & Refining Co., et al., docket No. CI61–157, et al. 593
Humble Oil & Refining Co., docket No. CI62–847. 413, 774
Hunt, H. L., et al., docket No. G–19460, et al. 273
Hunt, H. L., docket No. CI63–182. 560
*Hunt, H. L., et al., docket No. RI61–515. 498, 851
Hunt, H. L., et al., docket No. RI62–467, et al. 84
Hunt, Hassie Trust, docket No. G–18093. 1092
Hunt, Hassie Trust, et al., docket No. G–18897, et al. 223, 273
Hunt, Hassie Trust, et al., docket No. RI62–468, et al. 84
Hunt, Hassie Trust (Operator), et al., docket No. RI62–469, et al. 84
*Hunt, Lamar, et al., docket No. RI61–515. 498, 851
*Hunt, Lyda-Bunker Trusts, et al., docket No. RI61–515. 498, 851
*Hunt, Lyda-Caroline Trusts, et al., docket No. RI61–515. 498, 851
*Hunt, Lyda-Herbert Trusts, et al., docket No. RI61–515. 498, 851
*Hunt, Lyda-Lamar Trusts, et al., docket No. RI61–515. 498, 851
*Hunt, Lyda-Margaret Trusts, et al., docket No. RI61–515. 498, 851
*Hunt, N. B., et al., docket No. RI61–515. 498, 851
Hunt Oil Co., et al., docket No. G–18596, et al. 273
*Hunt Oil Co., et al., docket No. RI61–515. 498, 851
Hunt Oil Co., et al., docket No. RI62–523, et al. 84
Hunt Oil Co., et al., docket No. RI63–128, et al. 290
Hunt, W. H., docket No. G–19930. 834
*Hunt, W. H., et al., docket No. RI61–515. 498, 851
Hunt, William Herbert Trust Estate, docket No. G–18091. 1093
Hurley Oil and Gas Co., docket No. G–17775. 71, 417
Hyrum City, project No. 946. 1215
Idaho Power Co., project No. 1971. 404, 571, 572, 801, 1058
Indiana & Michigan Electric Co., docket No. E–7089. 746, 1094
Interstate Power Co., docket No. E–7086. 880, 1040

Page

Iowa Electric Light & Power Co., et al., docket No. CP62–119, et al 2, 1109
Iowa Power and Light Co., docket No. E–7081 849
J. C. Trahan Drilling Contractors (Formerly Shallow Oil Co., Inc.), et al., docket No. CI60–698, et al 223
J. M. Huber Corp., et al., docket No. G–8111, et al 424
*J. M. Huber Corp., et al., docket No. RI61–533 et al 1216
J. Ray McDermott & Co., Inc. (Operator), et al., docket No. G–19758, et al 924
Jamestown, Tennessee, Town of, docket No. CP63–141 432
Janke, Joseph Francis, Jr., et al., project No. 2314 198
Jasonville, Indiana, The City of, docket No. CP63–71 86
Jersey Central Power & Light Co., project No. 2309, et al 474
*Kane, G. A., et al., docket No. RI62–100, et al 1216
*Kansas Natural Gas, Inc., et al., docket No. RI62–100, et al 1216
*Kansas Natural Gas, Inc. (Operator), et al., docket No. RI62–100, et al 1216
*Kansas-Nebraska Natural Gas Co., Inc., docket No. CP62–215 1058
Kansas-Nebraska Natural Gas Co., Inc., docket No. CP63–28 707
Kansas-Nebraska Natural Gas Co., Inc., et al., docket No. CP63–180, et al 1012
Kansas Power and Light Co., issued May 15, 1963 926
Kennecott Copper Corp., project No. 1949 894
Kentucky Gas Transmission Corp., et al., docket No. G–16403, et al 1102
Kentucky West Virginia Gas Co., docket No. CP63–134 229
Kerr-McGee Oil Industries, Inc., docket No. CI63–923 717
King County, Washington, Water District No. 97 of, project No. 2316 1116
*Kuhn, Walter F., et al., docket No. RI62–100, et al 1216
Lake Shore Pipe Line Co., docket No. G–13262 812
Lone Star Gas Co., docket No. CP63–22 1108
Lone Star Gas Co., docket No. CP63–64 176
Lone Star Gas Co., et al., docket No. CP63–87 230
Lone Star Gas Co., docket No. CP63–152 529
Lone Star Gas Co., docket No. CP63–195 544
Lone Star Gas Co., docket No. CP63–213 813
Lowell Gas Co., et al., docket No. CP61–9, et al 7, 835
Lyons, C. H., Sr., et al., docket No. CI60–329, et al 223
*Magnolia Petroleum Co. (Socony Mobil Co.), et al., docket No. G–13827, et al 4
Maguire, Russell (Formerly Russell Maguire and Jack P. Rayzor (Operator), et al., docket No. G–19633 1023
Manti City Corp., project No. 1574 1108

Page

Manufacturers Light & Heat Co., The, et al., docket No. G–16404, et al 1102
Manufacturers Light & Heat Co., The, et al., docket No. CP61–155, et al 244
Manufacturers Light & Heat Co., The, docket No. CP63–37 861
Manufacturers Light & Heat Co., The, docket No. CP63–155 314
Marshall, Illinois, City of, et al., docket No. CP62–187, et al. 7, 835, 1100
Martinsville, Illinois, City of, et al., docket No. CP62–189, et al 7, 835, 1100
Mayronne, Reuben W., Jr., d/b/a Riverside Oil Co., et al., docket No. G–20182, et al 223
McCommons, William E., d/b/a McCommons Exploration Co., et al., docket No. RI62–476, et al 84
Michigan Gas Storage Co., et al., docket No. CP63–221, et al. 920
Michigan Wisconsin Pipe Line Co., et al., docket No. G–2327, et al 828
*Michigan Wisconsin Pipe Line Co., et al., docket No. G–12292, et al 932
Midland Petrochemical Co., docket No. G–20265, et al 388
Midwest Natural Gas Corp., docket No. CP63–186 1130
Midwestern Gas Transmission Co., docket No. G–16841, et al 903
Midwestern Gas Transmission Co., et al., docket No. G–18313, et al 426
Midwestern Gas Transmission Co., et al., docket No. CP62–116, et al 7, 835, 1100
Midwestern Gas Transmission Co., docket No. CP63–80 64, 153, 154
Midwestern Gas Transmission Co., et al., docket No. CP63–167 440
Midwestern Gas Transmission Co., et al., docket No. RP61–19, et al 320, 399, 723
Mike Little Gas Co., Inc., docket No. CP63–79 164
Miller Gas Co., et al., docket No. CP61–161 277
Minnesota Power & Light Co., project No. 346 895
Minnesota Power & Light Co., project No. 469 900
Mississippi River Fuel Corp., docket No. G–19495 74
Mississippi River Fuel Corp., docket No. CP63–190 814
Mississippi River Transmission Corp., docket No. CP61–274 863
Monroe City, Missouri, City of, et al., docket No. CP63–90, et al 390
Montana-Dakota Utilities Co., docket No. CP60–56 1071
Montana Power Co., The, project No. 1084 686

Page

Monterey Gas Transmission Co., et al., docket No. CP62–88, et al 929
Monticello, Georgia, City of, docket No. CP63–156 ..... 708, 912
Mountain Fuel Supply Co., et al., docket No. CP63–127, et al 803
Mountain Fuel Supply Co., docket No. CP63–258 1174
Mystic Power Co., et al., docket No. E–7082 712
*N. Appleman Co., et al., docket No. RI62–100, et al 1216
*National Associated Petroleum Co., et al., docket No. RI62–100, et al 1216
Natural Gas Pipeline Co. of America, et al., docket No. CP61–149, et al 8
Natural Gas Pipeline Co. of America, docket No. CP62–121 .. 40, 1096
Natural Gas Pipeline Co. of America, docket No. CP62–226 .. 913
Natural Gas Pipeline Co. of America, docket No. CP62–256 .. 278
Natural Gas Pipeline Co. of America, docket No. CP63–75 .. 178
Natural Gas Pipeline Co. of America, et al., docket No. CP63–87 230
Natural Gas Pipeline Co. of America, docket No. CP63–130 .. 418
Natural Gas Pipeline Co. of America, docket No. CP63–281 .. 1246
Natural Gas Pipeline Co. of America, et al., docket No. RP63–6, et al 399, 723
Neosho Rapids, Kansas, City of, docket No. CP63–142 497
Nevada Irrigation District, project No. 2266 1256
*New London Gas Co., et al., docket No. CP63–20, et al 754
New York State Natural Gas Corp., et al., docket No. G–17544 180
New York State Natural Gas Corp., et al., docket No. CP62–250, et al 119, 210
New York State Natural Gas Corp., docket No. CP63–253 .. 1097
*Newmont Oil Co., et al., docket No. G–13948, et al 4
Newmont Oil Co., et al., docket No. G–17765, et al 734
Niagara Mohawk Power Corp., project No. 2318 1290
North Penn Gas Co., et al., docket No. CP61–284, et al 119, 210
North Star Natural Gas Co., et al., docket No. CP63–45, et al .. 426
North Star Natural Gas Co. of Wisconsin, Inc., et al., docket No. CP63–44, et al 426
Northern Electric Cooperative, The, docket No. E–6670 768
Northern Indiana Public Service Co., docket No. CP63–170 .. 738
Northern Lights, Inc., project No. 2141 1293
*Northern Natural Gas Co., docket No. G–2409 1025
Northern Natural Gas Co., et al., docket No. G–8112, et al .. 424
*Northern Natural Gas Co., et al., docket No. G–12153, et al .. 689
*Northern Natural Gas Co., et al., docket No. G–18110, et al .. 1175

	Page
Northern Natural Gas Co., et al., docket No. G–18606, et al.	271
Northern Natural Gas Co., docket No. CP61–132	450
Northern Natural Gas Co., et al., docket No. CP62–66, et al.	559
Northern Natural Gas Co., et al., docket No. CP62–85, et al.	2, 1109
Northern Natural Gas Co., docket No. CP62–307	530
Northern Natural Gas Co., docket No. CP63–4	449
Northern Natural Gas Co., docket No. CP63–7	232
Northern Natural Gas Co., docket No. CP63–42	138
Northern Natural Gas Co., docket No. CP63–43	165
Northern Natural Gas Co., docket No. CP63–102	914
Northern Natural Gas Co., docket No. CP63–121	1111
Northern Natural Gas Co., docket No. CP63–150	864
Northern Natural Gas Co., docket No. CP63–169	816
Northern Natural Gas Co., docket No. CP63–200	1014
Northern Natural Gas Pipeline Co., docket No. CP61–5	890
*Northern Pump Co. (Operator), et al., docket No. RI62–100, et al	1216
Northern States Power Co., project No. 2056	866
Northern Utilities, Inc., docket No. RP63–10	775, 1299
Noxapater, Mississippi, Town of, docket No. CP63–128	1072
Ocean Drilling & Exploration Co., et al., docket No. CI60–743, et al	223
Ocean Drilling & Exploration Co. (Operator), et al., docket No. CI60–743, et al	581
Ohio Fuel Gas Co., The, et al., docket No. CP62–91, et al.	929
*Ohio Fuel Gas Co., The, docket No. CP62–153	1134
Ohio Fuel Gas Co., The, docket No. CP63–101	279
Ohio Fuel Gas Co., The, docket No. CP63–153	321
Ohio Fuel Gas Co., The, docket No. CP63–160	532
Ohio Fuel Gas Co., The, docket No. CP63–161	718
Ohio Fuel Gas Co., The, docket No. CP63–185	546
Order No. 252–A, docket No. R–212	382
Order No. 260, docket No. R–223	42
Order No. 260–A, docket No. R–223	777
Order No. 261, docket No. R–231	62
Order No. 262, docket No. R–225	309
Order No. 263, docket No. R–233	412
Order No. 264, docket No. R–234	589
Order No. 265, docket No. R–235	549
Order No. 266, docket No. R–236	551
Order No. 267, docket No. R–237	590
Order No. 268, docket No. R–221	818
Otter Tail Power Co., docket No. E–7083	715
Pacific American Fisheries, Inc., project No. 1082	1148
Pacific Gas & Electric Co., et al., docket No. E–6578	687

Page
Pacific Gas & Electric Co., project No. 77 991
Pacific Gas & Electric Co., project No. 96 993
*Pacific Gas & Electric Co., project No. 187 1002, 1074
Pacific Gas & Electric Co., project No. 1403 181
Pacific Gas & Electric Co., project No. 2310 1265
Pacific Northwest Pipeline Corp., et al., docket No. G–16237, et al 307
Pacific Power & Light Co., project No. 935 43
Pacific Power & Light Co., project No. 2071 44, 452
Pacific Power & Light Co., project No. 2071 (Yale) 45
*Pacific Power & Light Co., project No. 2082 478
Pacific Power & Light Co., project No. 2111 34
Packwood Electric Co., project No. 1289 806
Pan American Petroleum Corp., et al., docket No. G–10022, et al 733
Pan American Petroleum Corp., et al., docket No. G–16946, et al 223, 273, 697
*Pan American Petroleum Corp. (Operator), et al., docket No. G–18660, et al 1175
Pan American Petroleum Corp., docket No. CI63–867 378, 431
Pan American Petroleum Corp., et al., docket No. CI63–1455, et al 1119
*Pan American Petroleum Corp. (Operator), et al., docket No. RI61–532, et al 1216
Pan American Petroleum Corp., issued January 7, 1963 35
Panhandle Eastern Pipe Line Co., docket No. G–1116, et al 896
Panhandle Eastern Pipe Line Co., et al., docket No. G–11061, et al 828
Panhandle Eastern Pipe Line Co., docket No. CP60–60 1153
Panhandle Eastern Pipe Line Co., docket No. CP61–119 281
Panhandle Eastern Pipe Line Co., et al., docket No. CP63–123 824
Panhandle Eastern Pipe Line Co., docket No. CP63–148, et al 316
Panhandle Eastern Pipe Line Co., docket No. CP63–162 891
Panhandle Eastern Pipe Line Co., et al., docket No. CP63–183, et al 1012
Panhandle Eastern Pipe Line Co., docket No. CP63–208 916
Panhandle Eastern Pipe Line Co., docket No. CP63–248 1154
Peltier, Harvey, et al, docket No. CI60–505, et al 223
Pennsylvania Electric Co., docket No. E–6579 686
Pennsylvania Power Co., docket No. E–7087 930
Pennsylvania Power & Light Co., project No. 487 1032
*Pennsylvania Power & Light Co., project No. 2268 468, 1294

Page

*Permian Basin Pipeline Co., et al., docket No. G–15336, et al 689
Perry, Missouri, City of, et al., docket No. CP63–91, et al 390
*Petroleum, Inc., et al., docket No. RI62–100, et al 1216
Petroleum Offshore Leaseholds, Inc. (Operator), et al., docket No. G–19010, et al 116, 453
Phelps Dodge Corp., project No. 2304 552
Phillips Petroleum Co., et al., docket No. G–14244, et al 581
Phillips Petroleum Co., et al., docket No. G–16611, et al 273, 697
*Pioneer Production Corp. (Operator), et al., docket No. G–18553, et al 1175
Placer County Water Agency, project No. 2079 460
Placid Oil Co. (Operator), et al., docket No. RI62–477, et al 84
Portland General Electric Co., project No. 2030 199
Portland General Electric Co., project No. 2195 995
Portland General Electric Co., et al., project No. 2233 126
Potomac Edison Co., docket No. E–7104 1145
Provencal, Louisiana, The Village of, et al., docket No. CP62–152, et al 7, 835
Public Utility District No. 1 of Chelan County, Washington, project No. 2145 892
Public Utility District No. 1 of Pend Oreille County, Washington, project No. 2042 534
Public Utility District No. 1 of Pend Oreille County, Washington, project No. 2225 564
Public Utility District No. 1 of Snohomish County, Washington, et al., project No. 2157 87
Public Utility District No. 2 of Grant County, Washington, project No. 2114 901
Publishers' Paper Co., et al., project No. 2233 126
Puget Sound Power & Light Co., project No. 2150 54
*PWC Corp., The, et al., docket No. RI62–100, et al 1216
Ramona Gas Authority, The, docket No. CP63–33 75
Rayzor, Jack P., (Operator), et al., docket No. G–17130 1169
*Riddell Petroleum Corp., et al., docket No. G–18609, et al 1175
Rio Grande Electric Cooperative, Inc., et al., docket No. E–6788, et al 183
Sacramento Municipal Utility District, project No. 2101 806
St. Helens Petroleum Corp., et al., docket No. CI63–194, et al 803
*Salmon Corp., et al., docket No. RI62–100, et al 1216
Sam Houston Public Utility District, Erin, Tennessee, et al., docket No. CP62–182, et al 778
Seattle, Washington, City of, project No. 2144 1098
*Secure Trusts, et al., docket No. RI61–515 ..... 498, 851
Shamrock Oil and Gas Corp., The, docket No. G–14077 3

Page
Shell Oil Co., et al., docket No. G–17560, et al. 472
*Shell Oil Co. (Operator), et al., docket No. G–17888, et al. 1175
Shell Oil Co., et al., docket No. CI62–53, et al. 437
Shell Oil Co., docket No. CI63–267 118
*Shell Oil Co., et al., docket No. RI61–515 498, 851
*Shell Oil Co. (Operator), et al., docket No. RI61–515 498, 851
*Sinclair Oil & Gas Co. (Operator), et al., docket No. G–18748, et al. 1175
Sinclair Oil & Gas Co., docket No. G–20297 898
*Slade, Inc. (Operator), et al., docket No. G–19986, et al. 11, 408
*Slade, Inc., et al., docket No. RI60–147, et al. 11, 408
Smith, R. E., et al., issued January 4, 1963 29
Socony Mobil Oil Co., Inc., docket No. G–13780 400
Socony Mobil Oil Co., Inc., et al., docket No. G–17625, et al. 734
Socony Mobil Oil Co., Inc., et al., docket No. G–18461, et al. 223
Socony Mobil Oil Co., Inc., et al., docket No. CI63–669, et al. 803
Sohio Petroleum Co., et al., docket No. RI61–359, et al. 1146
*South Carolina Electric & Gas Co., docket No. E–6468 624, 1044, 1247
South Carolina Electric & Gas Co., et al., E–7085 1045
South Carolina Generating Co., et al., docket No. E–7085 1045
South Georgia Natural Gas Co., docket No. CP63–39. 739
South Texas Natural Gas Gathering Co. (A Delaware Corp.), et al., docket No. CP62–124, et al. 873
South Texas Natural Gas Gathering Co. (A Texas Corp.), et al., docket No. G–17050, et al. 873
South Texas Natural Gas Gathering Co., docket No. CP63–220 1276
Southern California Edison Co., et al., docket No. E–6578 687
Southern California Edison Co., et al., docket No. E–7072 683
Southern California Edison Co., et al., docket No. CP61–172, et al. 25
Southern California Edison Co., project No. 2175 183
*Southern Natural Gas Co., docket No. G–20509, et al. 323, 433, 779
Southern Natural Gas Co., et al., docket No. CP61–206, et al. 283
Southern Natural Gas Co., docket No. CP63–53 58
Southern Natural Gas Co., et al., docket No. CP63–146 421
Southern Natural Gas Co., docket No. CP63–184 724, 1076
Southern Natural Gas Co., docket No. CP63–199 709
Southern Natural Gas Co., docket No. CP63–251 1170
Southern Natural Gas Co., et al., docket No. RP63–4 149
South-Tex Corp. (Operator), et al. (Formerly Sun Oil Co.), et al., docket No. RI62–418, et al. 59
South-Tex Corp., et al., docket No. RI62–419, et al. 59

Page
Southwest Gas Corp., docket No. CP63–176 584
Southwest Gas Corp., docket No. RP61–2 585
Southwest Gas Producing Co., Inc., et al., docket No. G–20046, et al 223
Southwest Production Co., et al., docket No. CI63–618, et al 1119
Southwestern Public Service Co., docket No. E–7038 1149
Statement of General Policy No. 61–1, Sixth Amendment to 590
Stream, Inc., et al., issued March 26, 1963 587
Sun Oil Co., et al., docket No. G–6650, et al 59
Sun Oil Co., docket No. RI60–370 546
*Sun Oil Co., et al., docket No. RI61–515 498, 851
*Sun Oil Co. (Operator), et al., docket No. RI61–515 498, 851
Sun Oil Co., et al., docket No. RI63–129, et al 290, 441
Sunray DX Oil Co., et al., docket No. G–4281, et al 1079
*Sunray DX Oil Co. (Formerly Sunray Mid-Continent Oil Co.), docket No. CI61–1153 1295
Sunray DX Oil Co., et al., docket No. CI62–1478, et al 561
*Sunray Mid-Continent Oil Co., et al., docket No. G–17461, et al 784, 1152
*Superior Oil Co., The, et al., docket No. CI60–328, et al 1175
*Superior Oil Co., The, et al., docket No. RI61–515 498, 851
Sylvania Corp., The, et al., docket No. CP62–276, et al 119, 210
Telluride Power Co., et al., project No. 814, et al 127
Temple, Georgia, City of, docket No. CP63–122 291
Tenneco Corp., et al., docket No. G–18980, et al 581, 874, 1279
Tenneco Oil Co., (Operator), et al., docket No. G–13742, et al 1042, 1112
Tenneco Oil Co., et al., docket No. RI63–430, et al 1112
Tennessee California Gas Transmission Co., et al., docket No. CP61–173, et al 25
Tennessee Gas Transmission Co., docket No. G–11980, et al 65
*Tennessee Gas Transmission Co., et al., docket No. G–14562, et al 4
Tennessee Gas Transmission Co., et al., docket No. G–16842, et al 7, 835, 1100
Tennessee Gas Transmission Co., docket No. CP60–64 76
Tennessee Gas Transmission Co., et al., docket No. CP62–14, et al 244
Tennessee Gas Transmission Co., docket No. CP62–165 748
Tennessee Gas Transmission Co., et al., docket No. CP62–275, et al 119, 210
Tennessee Gas Transmission Co., et al., docket No. CP62–291, et al 929
Tennessee Gas Transmission Co., docket No. CP63–48 88
Tennessee Gas Transmission Co., docket No. CP63–85 184

Page
Tennessee Gas Transmission Co., docket No. CP63–86 200
Tennessee Gas Transmission Co., et al., docket No. CP63–112 318
Tennessee Gas Transmission Co., et al., docket No. CP63–146 421
Tennessee Gas Transmission Co., et al., docket No. CP63–173 725
Tennessee Gas Transmission Co., et al., docket No. CP63–177 535
Tennessee Gas Transmission Co., et al., docket No. CP63–181 710
Tennessee Gas Transmission Co., docket No. CP63–194 727
Tennessee Gas Transmission Co., et al., docket No. CP63–203 728
Tennessee Gas Transmission Co., docket No. CP63–236 1278
Tennessee Gas Transmission Co., docket No. CP63–247 1000
Tennessee Natural Gas Lines, Inc., et al., docket No. CP61–27, et al 7, 835, 1100
*Tennessee-Texan Oil Co., et al., docket No. G–16867, et al 784, 1152
Texaco Inc., et al., docket No. G–16994, et al 273, 697
*Texaco Inc., et al., docket No. G–19018, et al 784, 1152
*Texaco Inc., et al., docket No. CI61–119, et al 593
Texaco Inc. (Formerly the TXL Oil Corp.), et al., docket No. CI61–969, et al 223
Texaco Inc., et al., docket No. CI61–1416, et al 1040
Texaco Inc., docket No. CI63–468 30
Texaco Inc., et al., docket No. CI63–688, et al 803
*Texaco Seaboard Inc., et al., docket No. CI61–118, et al 593
Texas Eastern Transmission Corp., docket No. G–1964 1241
*Texas Eastern Transmission Corp., et al., docket No. G–12446, et al 249, 692, 875
Texas Eastern Transmission Corp., et al., docket No. CP60–122, et al 283
Texas Eastern Transmission Corp., docket No. CP61–203 1077
Texas Eastern Transmission Corp., et al., docket No. CP62–214, et al 119, 210
Texas Eastern Transmission Corp., docket No. CP63–88 233
Texas Eastern Transmission Corp., et al., docket No. CP63–96, et al 536
Texas Eastern Transmission Corp., et al., docket No. CP63–135 284
Texas Eastern Transmission Corp., docket No. CP63–166 402
Texas Eastern Transmission Corp., et al., docket No. CP63–167 440
Texas Eastern Transmission Corp., et al., docket No. CP63–177 535
Texas Eastern Transmission Corp., docket No. CP63–257 1156
Texas Gas Transmission Corp., docket No. G–1471 566
Texas Gas Transmission Corp., et al., docket No. CP61–247, et al 283
Texas Gas Transmission Corp., docket No. CP63–27 78

Page

Texas Gas Transmission Corp., docket No. CP63–35 140
Texas Gas Transmission Corp., docket No. CP63–145 435
Texas Gas Transmission Corp., docket No. CP63–154 918
Texas Gas Transmission Corp., docket No. CP63–182 919
Texas Gas Transmission Corp., docket No. CP63–214 1084
Texas Gas Transmission Corp., docket No. CP63–252 1157
*Tidewater Oil Co., et al., docket No. G–16908, et al 784, 1152
Tidewater Oil Co., et al., docket No. CI60–142, et al 293
Tidewater Oil Co., et al., docket No. CI62–137, et al 730
Tipton, Iowa, City of, et al., docket No. CP63–54, et al 2, 1109
Trans-Cities Pipeline Co., et al., docket No. CP63–15, et al .. 1159
Transcontinental Gas Pipe Line Corp., docket No. G–1277 .. 1131
Transcontinental Gas Pipe Line Corp., et al., docket No. CP61–284, et al 119, 210
Transcontinental Gas Pipe Line Corp., docket No. CP61–328 .. 1248
Transcontinental Gas Pipe Line Corp., docket No. CP62–31 .. 167
Transcontinental Gas Pipe Line Corp., docket No. CP63–18 .. 33
Transcontinental Gas Pipe Line Corp., docket No. CP63–82 .. 285, 867
Transcontinental Gas Pipe Line Corp., docket No. CP63–84 .. 442
Transcontinental Gas Pipe Line Corp., docket No. CP63–98 .. 142
Transcontinental Gas Pipe Line Corp., et al., docket No. CP63–112 318
Transcontinental Gas Pipe Line Corp., docket No. CP63–133 .. 701
Transcontinental Gas Pipe Line Corp., et al., docket No. CP63–138, et al 884
Transcontinental Gas Pipe Line Corp., docket No. CP63–147 .. 1078
Transcontinental Gas Pipe Line Corp., et al., docket No. CP63–172 694
Transcontinental Gas Pipe Line Corp., docket No. CP63–263 .. 1249
Transcontinental Gas Pipe Line Corp., et al., docket No. CP63–279 1251
Transcontinental Gas Pipe Line Corp., et al., docket No. RP63–3, et al 1279, 1283
Transwestern Pipeline Co., et al., docket No. G–20464, et al .. 1086, 1159
Transwestern Pipeline Co., docket No. CP63–143 702
Transwestern Pipeline Co., docket No. CP63–204 1132
Trice Production Co., et al., docket No. CI60–17, et al 223
Trico Electric Cooperative, Inc., docket No. E–7073 749
Trunkline Gas Co., docket No. G–20108 ..... 292, 580
Trunkline Gas Co., et al., docket No. CP60–22 (Phase Two), et al 828
Trunkline Gas Co., docket No. CP61–231 695
Trunkline Gas Co., docket No. CP63–40 143
Trunkline Gas Co., et al., docket No. CP63–123 824

Page
Trunkline Gas Co., docket No. CP63–165 392
Trunkline Gas Co., et al., docket No. CP63–173 725
Trunkline Gas Co., et al., docket No. CP63–215, et al 920
Twin Gas Co., docket No. CP63–144 539
U. S. Oil of Louisiana, Inc., et al., docket No. CI61–144, et al 223
Union Oil Co. of California, et al., docket No. G–17010, et al 874, 1283
Union Oil Co. of California, et al., docket No. CI61–331, et al 223
Union Oil Co. of California (Operator), et al., docket No. CI62–1120, et al 1283
Union Producing Co., et al., docket No. CI61–1111, et al 223
Union Texas Petroleum, et al., docket No. G–13221, et al 273, 697, 730, 733, 734, 874, 1040, 1172, 1279, 1283
Union Texas Petroleum-Division of Allied Chemical Corp., et al., docket No. CI61–1411, et al 223
United Fuel Gas Co., docket No. G–12195, et al 1133
United Fuel Gas Co., docket No. G–13372 168
United Fuel Gas Co., docket No. G–20270 876
*United Fuel Gas Co., et al., docket No. CP61–107 90, 456
United Fuel Gas Co., et al., docket No. CP62–90, et al 929
United Fuel Gas Co., docket No. CP63–178 567
United Gas Pipe Line Co., et al., docket No. CP60–36, et al 293
United Gas Pipe Line Co., et al., docket No. CP61–151, et al 283
United Gas Pipe Line Co., docket No. CP62–69 310
United Gas Pipe Line Co., docket No. CP62–161 883, 1038
United Gas Pipe Line Co., docket No. CP63–10 144
United Gas Pipe Line Co., docket No. CP63–46 145
United Gas Pipe Line Co., docket No. CP63–50 235
United Gas Pipe Line Co., docket No. CP63–52 286
United Gas Pipe Line Co., docket No. CP63–58 186
United Gas Pipe Line Co., docket No. CP63–62 1252
United Gas Pipe Line Co., docket No. CP63–108 541
United Gas Pipe Line Co., docket No. CP63–124, et al 288
United Gas Pipe Line Co., docket No. CP63–132 237
United Gas Pipe Line Co., et al., docket No. CP63–135 284
United Gas Pipe Line Co., et al., docket No. CP63–181 710
United Gas Pipe Line Co., docket No. CP63–189 711
United Gas Pipe Line Co., docket No. CP63–233 923
United Gas Pipe Line Co., docket No. CP63–239 1039
United Gas Pipe Line Co., docket No. CP63–241 1163
United Gas Pipe Line Co., docket No. RP61–18 36
United Gas Pipe Line Co., docket No. RP63–1 270, 1114
United Natural Gas Co., et al., docket No. CP61–284, et al 119, 210
*United Producing Co., Inc., et al., docket No. CI60–350, et al 1175

Page

United States Department of the Interior, Bonneville Power Administration, docket No. E–7080 878
United States Department of the Interior, Bureau of Reclamation, Eklutna Project, Alaska, docket No. E–7045 770
United States Department of the Interior, Bureau of Reclamation, Falcon Dam Project, docket No. E–6577 457
Utah Power & Light Co., docket No. E–7034 128
Utah Power & Light Co., et al., docket No. E–7079 771
Utah Power & Light Co., et al., project No. 749, et al 751
Utah Power & Light Co., et al., project No. 814, et al 127
Valley Gas Transmission, Inc., docket No. CP63–93 147
Valley Gas Transmission, Inc., et al., docket No. CP63–140, et al 884
Valley Gas Inc., docket No. CP63–198 1288
*W. E. Bakke Oil Co. (Operator), et al., docket No. RI62–100, et al 1216
Washington Water Power Co., The, project No. 2075 379
Western Colorado Power Co., The, project No. 400 1016
Western Natural Gas Co., docket No. G–14737, et al 169
*William Graham Oil Co. (Operator), et al., docket No. RI62–100, et al 1216
*Winfield, Iowa, Town of, et al., docket No. CP63–21, et al 754
Wisconsin Fuel and Light Co., docket No. CP63–210 826
Wisconsin Southern Gas Co., Inc., et al., docket No. CP63–11, et al 2, 1109
Witherspoon, James W., docket No. RI63–196 38
Wrangell, Alaska, City of, project No. 2313 202
*Yuba County Water Agency, et al., project No. 2246, et al 1002
Yucca Petroleum Co., docket No. RI63–251 211

TABLE OF CASES CITED

Page

Alabama Power Co. (Project No. 2146), 18 FPC 257 471
Alabama-Tennessee Natural Gas Co. (G–5471), 27 FPC 1063 ..... 334, 338
Alabama-Tennessee Natural Gas Co. (G–5471) 27 FPC 1180 434
Algonquin Gas Transmission Co. *v.* Federal Power Commission, 201 F. 2d 334 72
Amerada Petroleum Corp. (CI62–1544), 28 FPC 396 592
Amerada Petroleum Corp. (CI62–1544), 29 FPC 171 ..... 592, 599
Amerada Petroleum Corp. (G–9385), 29 FPC 204 840
Amerada Petroleum Corp. (CI62–1544), 29 FPC 218 225
Amere Gas Utilities Co. *v.* Public Service Commission of West Virginia, 347 U.S. 910 109
American Louisiana Pipe Line Co. (G–2306), 20 FPC 575 544
American Louisiana Pipe Line Co. (CP61–24), 27 FPC 792 788
American Power & Light Co. *v.* Securities and Exchange Commission, 329 U.S. 90 1233
Area Rate Proceeding, (AR61–1), 29 FPC 588 1101
Aris Gloves *v.* United States, 46 CCPA 41 (1958) 884
Arizona *v.* California, 373 U.S. 546 553
Arkansas Power & Light Co. (E–6709) 16 FPC 1009 ..... 628, 653
Ashland Oil & Refining Co. (G–12796), 19 FPC 1145 ..... 1181, 1202
Associated Oil and Gas Co. *v.* Federal Power Commission, 280 F. 2d 31 437
Atlantic Refining Co. (G–13919), order issued October 13, 1960 496
Atlantic Refining Co. (CI62–1562), 28 FPC 469 32
Atlantic Refining Co. *v.* Federal Power Commission, 316 F. 2d 677 ..... 697, 839
Atlantic Refining Co. *v.* Public Service Commission of N.Y., 360 U.S. 378 (1959) ..... 172, 173, 221, 250, 262, 264, 266, 267, 274, 275, 507, 510, 518, 591, 596, 603, 606, 610, 612, 616, 617, 787, 788, 790, 791, 1183, 1199, 1202, 1208, 1210, 1297.
Atlantic Seaboard Corp. (G–854), 7 FPC 926 302
Atlantic Seaboard Corp. (G–1384), 11 FPC 43 ..... 341, 342, 343, 349, 681, 781, 782, 903, 934, 937, 939, 944, 954, 963, 968, 1026
Atlantic Seaboard Corp. (G–11184), 17 FPC 534 93
Atlantic Seaboard Corp. (CP62–43), 27 FPC 370 65
Atlantic Seaboard Corp. (G–17774), 28 FPC 1145 1143
Bel Oil Corp. (G–4505), 28 FPC 1006 838
Ben Bolt Gathering Co. (G–20032), 26 FPC 825 942
Bull *v.* United States, 295 U.S. 247 628
California Electric Power Co. (E–6670), 18 FPC 239 685
California Oregon Power Co. (E–6390), 13 FPC 1 ..... 480, 482
California Oregon Power Co. (Project No. 2082), 23 FPC 59 ..... 481, 488, 489, 490
California Oregon Power Co. (Project No. 2082), 25 FPC 579 ..... 481, 488, 489
Carolina Aluminum Co. (Project No. 2197), 19 FPC 704 471
Carolina Aluminum Co. and Carolina Power & Light Co. (E–6712), 17 FPC 83 132

Page

Carolina Natural Gas Corp. (G–1335), 10 FPC 469 302
Central Kentucky Natural Gas Co. (G–9689), 16 FPC 437 .. 95, 105, 1137, 1140
Champlin Oil and Refining Co., (G–9277) (unreported) 609
Cities Service Gas Co. (G–2569), 14 FPC 134 618
Cities Service Co. (G–8921), 28 FPC 1108 ..... 205, 206, 524
Cleveland, City of, *v.* Hope Natural Gas Co. (G–100), 3 FPC 150 339
Colorado Interstate Gas Co. (G–2260), 19 FPC 1012 373
Colorado Interstate *v.* Federal Power Commission, 324 U.S. 581 943
Colton, City of, California *v.* Southern California Edison Co., (E–6821) 25 FPC 223 685
Columbia Broadcasting System, Inc. *v.* United States, 316 U.S. 407 175
Continental Oil Co. (RI60–165), issued February 24, 1960 (unreported) ... 526
Continental Oil Co. (CATCO), (G–11024), 27 FPC 96 ..... 86, 222, 268, 786, 787, 789, 791, 792, 793, 794, 796, 799, 1181
Continental Oil Co. (G–11024), 28 FPC 1090 ..... 401, 472
Continental Oil Co. (CI62–1508), 29 FPC 887 1286
Continental Oil Co. *v.* Federal Power Commission, 266 F. 2d 208 255
Dartmouth College *v.* Woodward, 4 Wheat 518 222
Dayton Power & Light Co. *v.* Public Utilities Commission of Ohio, 292 U.S. 290 936
Deep South Oil Co. of Texas *v.* Federal Power Commission, 247 F. 2d 882 .. 1208
Detroit, City of, *v.* Federal Power Commission, 230 F. 2d 810 ..... 255, 369, 374, 434, 896
El Paso Natural Gas Co. (G–2018), 13 FPC 421 ..... 373, 780
El Paso Natural Gas Co. (G–11797), 19 FPC 393 1180
El Paso Natural Gas Co. (G–4769), 22 FPC 260 ..... 160, 334, 339, 373, 569, 780, 870, 871
El Paso Natural Gas Co. (G–12580), 22 FPC 900 1180
El Paso Natural Gas Co. (G–13862), 23 FPC 369 608
El Paso Natural Gas Co. (G–16235), 26 FPC 687 1066
El Paso Natural Gas Co. (CP60–72), 27 FPC 1134 791
El Paso Natural Gas Co. (G–4769), 28 FPC 688 ..... 159, 197, 337, 365, 367, 370, 371, 372, 374, 375, 376, 434, 853, 870
El Paso Natural Gas Co. (G–4769), 28 FPC 952 ..... 160, 197
El Paso Natural Gas Co. *v.* Federal Power Commission, 281 F. 2d 567 ... 334, 335, 336, 374, 376, 378, 871, 872
Eugene, City of, Oregon, (Project No. 2059), 14 FPC 408 ..... 482, 483
Federal Communications Commission *v.* Pottsville Broadcasting Co., 309 U.S. 134 253
Federal Power Commission *v.* Hope Natural Gas Co., 320 U.S. 591 ..... 175, 518, 612, 613
Federal Power Commission *v.* J. M. Huber Corporation, 133 F. Supp. 479 .. 425
Federal Power Commission *v.* Oregon, 349 U.S. 435 ..... 483, 484
Federal Power Commission *v.* Panhandle Eastern Pipe Line Co., 337 U.S. 498 ..... 77, 78, 253, 254, 255, 263
Federal Power Commission *v.* Sierra Pacific Power Co., 350 U.S. 348 ... 266, 519
Federal Power Commission *v.* Tennessee Gas Transmission Co., 371 U.S. 145 ..... 159, 160, 508, 510
Federal Power Commission *v.* Transcontinental Gas Pipe Line Corp., 365 U.S. 1 ..... 518, 1030
Florida Economic Advisory Council *v.* Federal Power Commission, 251 F. 2d 643 1115
Forest Oil Corp. (G–5510), 17 FPC 617 161

Page
Forest Oil Corp. v. Federal Power Commission, 263 F. 2d 622 (CA5, 1959) 161
Franklin, Illinois, Village of (G–8471), 17 FPC 118 302, 305
Gaplin v. Page, 18 Wall. 350 222
Garkane Power Association, Inc. (Project No. 2219), 23 FPC 491 1125
Georgia Power Co. (Project No. 2177), 21 FPC 296 471
Glassell, Alfred C., Jr. (G–9278), 25 FPC 1071 612
Grand River Dam Authority v. Federal Power Commission, 246 F. 2d 453 629
Grant, City of, Missouri, (CP62–303), 29 FPC 754 1061
Gulf Oil Corp. (G–9520), order issued April 25, 1955 (unreported) 609
Gulf Refining Co. (G–8516), order issued February 25, 1955 (unreported) 838
Guss v. Utah Labor Board, 353 U.S. 1 254
Home Gas Co. (G–183), 2 FPC 402 691
Home Gas Co. (G–1966), 13 FPC 241 942
Hope Natural Gas Co., (G–12571), 19 FPC 405 616, 617
Houston Texas Gas and Oil Corp. (G–9262), 16 FPC 118 596, 598
Houston Texas Gas and Oil Corp. (G–9262), 17 FPC 303 596, 598
Humble Oil & Refining Co. v. Federal Power Commission, 14 FPC 592 1218, 1220
Humble Oil Co. (G–3085), 14 FPC 845 1219, 1232
Hunt, H. L. (RI62–467), 28 FPC 897 13, 84, 86, 509
Hunt, H. L. v. Federal Power Commission, 5th Circuit, No. 19065, July 19, 1962 510
Hunt Oil Co. (G–9065), 28 FPC 623 13, 84, 411, 500
Hunt Oil Co. (G–9065), 30 FPC 220 619
Hunt Oil Co. v. Federal Power Commission, (G–9411) 16 FPC 1292 1218, 1219, 1232
Idaho Power Co. (Project No. 1971), 14 FPC 55 482, 483
Interstate Power Co. v. Federal Power Commission, 236 F. 2d 372 cert. denied, 352 U.S. 967 782, 967, 971
J. M. Huber Corp. v. Federal Power Commission, 236 F. 2d 550 425
J. Ray McDermott & Co., Inc. (CI63–301), 28 FPC 1300 72, 219, 220, 224, 225
Kansas Nebraska Natural Gas Co. (G–12391), 25 FPC 448 344, 348, 434
Kansas Pipe Line & Gas Co. (G–106), 2 FPC 29 252, 262, 1202
Lake Ontario Land Development v. Federal Power Commission, 212 F. 2d 227 1266
Lexington, City of, v. Federal Power Commission, 295 F. 2d 109 (CA4) 334, 335, 336, 374
Manufacturers Light & Heat Co. (CP61–60), 26 FPC 537 1136
Mason, Tennessee, Mayor and Alderman of (G–13659), 21 FPC 853 302
Michigan Consolidated Gas Co. v. Federal Power Commission, 283 F. 2d 204 73
Michigan Gas & Electric Co. v. Federal Power Commission, 290 F. 2d 374 764
Michigan Wisconsin Pipe Line Co. (G–13246), 19, FPC 989 969, 1183, 1209
Michigan Wisconsin Pipe Line Co. (G–13246), 21 FPC 552 1062, 1067, 1068
Michigan Wisconsin Pipe Line Co. (G–20569), 24 FPC 177 757, 758, 764, 766, 965
Michigan Wisconsin Pipe Line Co. (CP61–102), 27 FPC 449 799, 1082, 1183, 1185, 1186, 1190, 1206, 1210
Midstates Oil Corp., 14 FPC 703 1218, 1219, 1220, 1232
Midstates Oil Corp. v. Federal Power Commission (G–4932) 20 FPC 70 1218
Midwestern Gas Transmission Co. (G–18313), 22 FPC 775 544, 757, 758, 1061

Page
Midwestern Gas Transmission Co. (G–11349), 22 FPC 1157 960
Minneapolis Gas Co. *v.* Federal Power Commission, 294 F. 2d 212 .. 409, 410, 412
Mississippi River Fuel Corp. (G–1281), 9 FPC 198 302
Mississippi River Fuel Corp. (G–1995), 12 FPC 109 1030
Mississippi River Fuel Corp. *v.* Federal Power Commission, 202 F. 2d 899 .. 60, 61
Mississippi River Fuel Corp. *v.* Federal Power Commission, 252 F. 2d 619, cert. denied 355 U.S. 904 ..... 690, 691, 936
Mississippi River Fuel Corp. *v.* Federal Power Commission, 281 F. 2d 919 .. 526
Mitchell v. Maurer, 293 U.S. 237 253
Montana-Dakota Utilities Co. *v.* Northwestern Public Service Co., 341 U.S. 246 691
Montana Power Co., The (E–6384), 11 FPC 768 238
Montana Power Co., The (E–6404), 11 FPC 832 238
Montana Power Co., The (E–6384), 15 FPC 1024 238
Montana Power Co., The (E–6384), 16 FPC 1388 238
Montana Power Co., The (E–6384), 18 FPC 835 238
Montana Power Co., The (E–6384), 20 FPC 807 238
Montana Power Co. *v.* Federal Power Commission, 298 F. 2d 335 1266
National Coal Ass'n. *v.* Federal Power Commission, 247 F. 2d 86 .... 1025, 1028
National Labor Relations Board *v.* Baltimore Transit Co., 140 F. 2d 51 ... 253
National Labor Relations Board *v.* Grace Co., 184 F. 2d 126 (1950) 1233
National Labor Relations Board *v.* National Container Corp., 211 F. 2d 525 (1954) 1233
National Labor Relations Board *v.* Monsanto Chemical Co., 205 F. 2d 763 .. 1233
Natural Gas Pipeline Co. of America (CP62–121), 27 FPC 997 41
Nevada Irrigation District (Project No. 2266), 29 FPC 1256 1295
New York State Natural Gas Corporation, (CP62–275), 28 FPC 938 65
Niagara Falls Power Co. *v.* Federal Power Commission, 137 F. 2d 787, cert. denied, 320 U.S. 792 ..... 1265, 1266
Northern Natural Gas Co. (G–1382), 11 FPC 123 ..... 341, 342, 372, 934
Northern Natural Gas Co. (G–2085), 12 FPC 66 ..... 372, 690
Northern Natural Gas Co. (G–2217), 14 FPC 11 ..... 344, 348
Northern Natural Gas Co. (G–2505), 16 FPC 803 690
Northern Natural Gas Co. (G–17485), 22 FPC 164 ..... 1061, 1068, 1069, 1070, 1177
Northern Natural Gas Co. (G–19040), 25 FPC 431 ..... 338, 434, 781
Northern Natural Gas Co. (CP61–132), 25 FPC 1205 450
Northern Natural Gas Co. (G–19040), 27 FPC 915 1026
Northern Natural Gas Co. (CP61–132), 28 FPC 1155 945
Northern Natural Gas Co. *v.* State Corporation Commission of Kansas, 372 U.S. 84 (1963) 693
Ohio Fuel Gas Co. (G–1786), 13 FPC 280 942
Ohio Oil Co., The (G–15385), 27 FPC 551 839
Ohio Oil Co., The (RI60–92), 27 FPC 1373 ..... 118, 398
Oklahoma Natural Gas Co. *v.* Federal Power Commission, 257 F. 2d 634, cert. dismissed, 358 U.S. 948 1142
Olin Gas Transmission Corp. (G–8559), 17 FPC 695 ..... 373, 377
Pacific Gas & Electric Co. (Project No. 708), 2 FPC 632 1266
Pacific Gas & Electric Co. (Project No. 616), 14 FPC 518 471
Pacific Gas & Electric Co. (Project No. 708), 14 FPC 556 471
Pacific Gas & Electric Co. (Project No. 2310), 29 FPC 1265 1295
Pan American Petroleum Corp. *v.* Federal Power Commission, 298 F. 2d 478 734

Page
Panhandle Eastern Pipe Line Co. (G–1116), 13 FPC 53 369, 372, 376, 969
Panhandle Eastern Pipe Line Co. (G–2506), 13 FPC 1570 521
Panhandle Eastern Pipe Line Co. (G–1705), 15 FPC 46 303, 1066
Panhandle Eastern Pipe Line Co. (G–1705), 15 FPC 1421 301, 302
Panhandle Eastern Pipe Line Co. (G–19780), 25 FPC 550 434
Panhandle Eastern Pipe Line Co. (G–2506), 25 FPC 787 373, 374
Panhandle Eastern Pipe Line Co. (CP60–103), 27 FPC 35 795, 798, 799, 1082, 1185, 1189, 1190, 1206
Panhandle Eastern Pipe Line Co. *v.* Federal Power Commission, 305 F. 2d 763, cert. denied, 372 U.S. 916 374, 897
Panhandle Eastern Pipe Line Co. *v.* Federal Power Commission, 316 F. 2d 659 338, 434, 435
Panhandle Eastern Pipe Line Co. *v.* Federal Power Commission, 332 U.S. 507 254, 255
Panhandle Eastern Pipe Line Co. *v.* Public Service Commission of Indiana, 332 U.S. 507 613
Pennsylvania Electric Co. (E–6579), 16 FPC 710 670
Pennsylvania Water Co. *v.* Federal Power Commission, 343 U.S. 414 1298
Pennsylvania Water & Power Co. *v.* Federal Power Commission, 123 F. 2d 155 468
Peoples Gulf Coast Natural Gas Pipeline Co., (G–19086), 24 FPC 106 1202
Permian Basin Pipeline Co. (G–1928), 12 FPC 85 1195
Petroleum Offshore Leaseholds, Inc. (Operator), (G–19010), 29 FPC 453 582
Phillips Petroleum Co. (G–20352), order issued December 16, 1959, (unreported) 526
Phillips Petroleum Co. (G–17071), order issued May 3, 1960, (unreported) 496
Phillips Petroleum Co. (RI60–336), order issued May 11, 1960, (unreported) 526
Phillips Petroleum Co. (G–1148), 24 FPC 537 4, 14, 19, 20, 84, 85, 409, 410, 608, 619, 789, 792, 1199
Phillips Petroleum Co. (G–14244), 29 FPC 581 1279
Phillips Petroleum Co. *v.* Wisconsin, 347 U.S. 672 255, 263, 373, 506, 509, 618, 838, 1233
Portland General Electric Co. (Project No. 2030), 10 FPC 445 482, 483
Portland General Electric Co. (Project No. 2195), 17 FPC 58 482
Powhattan Mining Co. *v.* Ickes, 118 F. 2d 106 609
Public Service Commission of the State of New York *v.* Federal Power Commission, 143 F. 2d 143 261
Public Service Commission of New York *v.* Federal Power Commission (CATCO), 257 F. 2d 717, affirmed *sub nom.* Atlantic Refining Co. *v.* Public Service Commission, 360 U.S. 378 250, 260
Public Service Commission *v.* Federal Power Commission, 284 F. 2d 200 (CADC) 596, 597
Public Service Commission *v.* Federal Power Commission, 287 F. 2d 143 (CADC), cert. denied 365 U.S. 880 250, 251, 262, 263, 266, 267, 614
Public Service Commission of N.Y. *v.* Federal Power Commission, 287 F. 2d 146 (CADC) 472, 592, 614
Public Service Commission *v.* Federal Power Commission, 295 F. 2d 140 596, 597
Public Service Commission *v.* Federal Power Commission, 361 U.S. 195 582, 1279
Public Service Company of New Hampshire (Project No. 2288), 27 FPC 830 471, 1290
Puget Sound Power & Light Co. (Project No. 2150), 15 FPC 1496 54, 482
Puget Sound Power & Light Co. (Project No. 943), 28 FPC 718 482
Pure Oil Co., The (G–17930), 25 FPC 383 32, 501, 506, 508, 512, 513, 516, 517, 518, 520, 601, 852, 855

Page

Pure Oil Co., The, *v.* Federal Power Commission, 299 F. 2d 370 ..... 32, 501, 502, 503, 516, 520, 521, 852
Saturn Oil & Gas Co. *v.* Federal Power Commission, 250 F. 2d 61, cert. denied, 355 U.S. 956 255
Seaboard Air Line R. Co. *v.* County of Crisp, 280 F. 2d 873, cert. denied. 364 U.S. 942 572
Seaboard Oil Co. (G–11970), 19 FPC 416 617
Securities and Exchange Commission *v.* Chenery Corp., 332 U.S. 194 1233
Shell Oil Co. (RI61–515), 29 FPC 498 601
Shell Oil Co. (G–9446), 28 FPC 257 838
Shell Oil Co. (G–17560), 29 FPC 472 582
Signal Oil & Gas Co. *v.* Federal Power Commission, 238 F. 2d 771 ..... 618, 1198
Skelly Oil Co. (G–18638), 28 FPC 401 ..... 172, 173, 175, 222, 275, 592, 595, 596, 597, 598, 599, 606, 607, 608, 610, 611, 614, 619, 733, 734, 785, 786, 787, 789, 792, 793, 794, 795, 799, 839, 1153, 1181.
Slade, Inc. (G–19986), 29 FPC 11 ..... 510, 1221
Socony Mobil Oil Co. Inc. (G–13780), 27 FPC 347, rehearing denied 27 FPC 675 ..... 400, 401, 616, 792
Socony Mobil Oil Co., Inc. (G–13746), 28 FPC 357 ..... 1281, 1284, 1285
Socony Mobil Oil Co., Inc. *v.* Federal Power Commission, CADC No. 17057 400
Sohio Petroleum Co. *v.* Federal Power Commission, 298 F. 2d 465 734
South Carolina Generating Co. (E–6585), 16 FPC 52 680
South Georgia Natural Gas Co. (G–9892), 22 FPC 211 329
Southern California Edison Co. (E–7049), 28 FPC 787 551
Southern California Edison Co. (Project No. 1930), 8 FPC 364 1266
Southern Natural Gas Co. (G–20509), 24 FPC 26 373
Southern Natural Gas Co. (G–20509), 29 FPC 323 940
St. Lawrence Gas Co. (G–17500), 26 FPC 265 1202
Standard Oil Co. of California, (CI60–333), 27 FPC 1153 ..... 797, 798, 799
State of Washington Department of Game *v.* Federal Power Commission, 207 F. 2d 391 ..... 483, 484
State of Wisconsin *v.* Federal Power Commission, 303 F. 2d 380 (CADC), cert. granted 369 U.S. 870 ..... 410, 601
Sun Oil Co. *v.* Federal Power Commission, 256 F. 2d 233 ..... 60, 61, 1218, 1219, 1232, 1235
Sunray DX Oil Co. (G–2975), 28 FPC 171 1299
Sunray DX Oil Co. (G–4281), 29 FPC 1079 1186
Sunray Mid-Continent Oil Co. (G–2975), 20 FPC 824 ..... 1296, 1297, 1298
Sunray Mid-Continent Oil Co. *v.* Federal Power Commission, 270 F. 2d 404 ..... 220, 225
Sunray Mid-Continent Oil Co. *v.* Federal Power Commission, 290 F. 2d 552 546
Sunray Mid-Continent Oil Co. *v.* Federal Power Commission, 364 U.S. 137 ..... 254, 526, 1298
Tacoma, City of, Washington (Project No. 2016), 10 FPC 424 ..... 482, 483
Tenneco Corporation (G–18980), 29 FPC 874 ..... 1283, 1285, 1287
Tenneco Corporation (CI61–1272), 28 FPC 382 77
Tenneco Oil Co., (Operator), (CI63–334), 28 FPC 1197 221
Tennessee Gas Transmission Co. (G–11980), 27 FPC 202 ..... 344, 348, 942
Tennessee Gas Transmission Co. (G–14562), 27 FPC 610 ..... 5, 263
Tennessee Gas Transmission Co. (G–14562), 29 FPC 4 735

Page

Tennessee Gas Transmission Co. *v.* Federal Power Commission (5th Cir., 1960), 283 F. 2d 729 ---- 852
Texaco Inc. (G–15546), 27 FPC 847 ---- 853
Texaco Inc. (G–13169), 28 FPC 247 ---- 6, 472, 582, 898, 1280, 1284, 1285
Texaco Inc. *v.* Federal Power Commission, 290 F. 2d 149 ---- 518, 599
Texaco Seaboard Inc. (G–13169), 27 FPC 482 ---- 788
Texaco Seaboard Inc. (CI61–118), 29 FPC 593 ---- 590, 591, 592, 785, 839, 1181
Texas Eastern Transmission Corp. (G–12446), 21 FPC 860 ---- 251, 260, 261, 262, 264, 265
Texas Eastern Transmission Corp. (G–12446), 26 FPC 167 ---- 252, 253
Texas Eastern Transmission Corp. (CP60–122) 27 FPC 391 ---- 65
Texas Eastern Transmission Corp. (G–12446), 29 FPC 249 ---- 936
Texas Gas Transmission Corp. (G–17335), 22 FPC 378 ---- 472
Tidewater Oil Co. (G–13310), 27 FPC 1267 ---- 205, 618
Transcontinental Gas Pipe Line Corp., 20 FPC 264, remanded Public Service Commission of New York *v.* Federal Power Commission, 361 U.S. 195 ---- 582, 1279
Transcontinental Gas Pipe Line Corp., (G–20107), 24 FPC 348 ---- 72
Transcontinental Gas Pipe Line Corp. *v.* Federal Power Commission, 365 U.S. 1 ---- 254
Transwestern Pipeline Co. (G–14871), 22 FPC 391 ---- 496, 1182, 1184, 1209
Transwestern Pipeline Co. (G–14871), 28 FPC 109 ---- 1209
Trunkline Gas Co. (G–15394), 21 FPC 704 ---- 596
Union Texas Petroleum (G–13221), 29 FPC 273 ---- 733, 838
Union Texas Petroleum (G–13221), 29 FPC 730 ---- 225, 1172
United Fuel Gas Co. (G–1781), 11 FPC 779 ---- 94
United Fuel Gas Co. (G–1781), 12 FPC 251 ---- 94, 942, 969
United Fuel Gas Co. (G–2451), 23 FPC 127 ---- 373
United Fuel Gas Co. (G–12195), 24 FPC 467 ---- 94
United Fuel Gas Co. (G–11184), 17 FPC 534 ---- 93
United Fuel Gas Co. (G–20270), 28 FPC 944 ---- 589, 1101
United Gas Improvement Co. *v.* Federal Power Commission, 283 F. 2d 817 (CA9), cert. denied, 365 U.S. 881 ---- 173, 267, 268, 275, 509, 597, 602, 614, 617, 1203
United Gas Improvement Co. *v.* Federal Power Commission, 287 F. 2d 159 ---- 267, 614
United Gas Improvement Co. *v.* Federal Power Commission, 290 F. 2d 133, (CA5), cert. denied, 368 U.S. 823 ---- 173, 267, 275, 597, 603, 614, 1202
United Gas Improvement Co. *v.* Federal Power Commission, 290 F. 2d 147 ---- 614
United Gas Pipe Line Co. (G–9547), 27 FPC 504 ---- 36
United Gas Pipe Line Co. *v.* Mobile Gas Service Corp., 350 U.S. 332 (1956) ---- 500, 501, 503, 504, 518, 519, 612, 613
United Gas Pipe Line Co. *v.* Memphis Light, Gas and Water, 358 U.S. 103 ---- 377, 500, 508, 509, 612
United States *v.* Corrick, 298 U.S. 435 ---- 253
United States ex rel Chapman *v.* Federal Power Commission, 345 U.S. 154 ---- 447
United States *v.* Grand River Dam Authority, 363 U.S. 229 ---- 628, 652
United States *v.* Public Utilities Commission of California, 345 U.S. 295 ---- 1095
United States *v.* West Virginia Power Co., 122 F. 2d 733, cert. denied, 341 U.S. 683 ---- 445
Utah Power & Light Co. *v.* United States, 243 U.S. 389 ---- 1265
Van Curler *v.* United States, 326 F. 2d 727 ---- 782
Virginia Petroleum Jobbers *v.* Federal Power Commission (CADC, 1958), 259 F. 2d 921 ---- 852, 853

Page

Virginia Petroleum Jobbers *v.* Federal Power Commission, 265 F. 2d 364.. 1133
Western Distributing Co. *v.* Public Service Commission, of Kansas, 285 U.S. 119 691
WJR, The Good Will Station, Inc. *v.* Federal Communications Commission, 174 F. 2d 226 222
Wrightsman Oil Co. (RI60–163), order issued February 24, 1960 (unreported) 526

TABLE OF STATUTES CITED

United States:

Administrative Procedure Act of 1946, 60 Stat. 237: Page

Sec 4(a) ---- 63, 551, 589

Sec. 8(b) ---- 1115

Bankruptcy Act 52 Stat. at 907:

Sec. 322 ---- 828

Bonneville Act, the, 50 Stat. 731 ---- 878

Boulder Canyon Project Act, as amended, 45 Stat. 1057:

Sec. 6 ---- 192

Sec. 13(c) ---- 553

Eklutna Project Act of July 31, 1950, 64 Stat. 382 ---- 771

Federal Power Act, 49 Stat. 838:

Sec. 3(8) ---- 474

Sec. 3(10) ---- 482

Sec 3(11) ---- 194, 475, 901, 1258, 1268

Sec. 3(13) ---- 382

Sec. 4 ---- 67, 1016

Sec. 4(a) ---- 382

Sec. 4(b) ---- 382

Sec. 4(c) ---- 382

Sec. 4(e) ---- 54,
67, 194, 461, 468, 474, 475, 482, 552, 555, 808, 1016, 1268, 1290

Sec. 4(f) ---- 198, 202, 1116

Sec. 6 ---- 469, 895

Sec. 8 ---- 127, 894

Sec. 9 ---- 43, 778, 832, 1117

Sec. 9(b) ---- 199

Sec. 9(b)(1) ---- 129

Sec. 10 ---- 580

Sec. 10(a) ---- 43, 482, 778

Sec. 10(d) ---- 475, 896, 900

Sec. 10(e) ---- 807

Sec. 10(f) ---- 239, 240, 624, 626, 631, 686, 687, 688, 819, 822

Sec. 10(i) ---- 43, 469, 470, 778, 1256

Sec. 11 ---- 126

Sec. 14 ---- 469, 1257

Sec. 15 ---- 469

Sec. 17 ---- 807

Sec. 23(a) ---- 1265, 1276

Sec. 23(b) ---- 474

Sec. 26 ---- 808

Sec. 201 ---- 830, 831

Sec. 202(c) ---- 183, 749, 750, 768

Sec. 203 ---- 129,
551, 552, 683, 685, 712, 715, 771, 774, 829, 831, 930, 932, 1048

United States—Continued
Federal Power Act—Continued Page
Sec. 204 ... 310, 387, 715, 849, 851, 880, 906
Sec. 204(f) ... 716, 851, 882, 906, 1213
Sec. 205 ... 133, 745, 747, 926, 928, 1052, 1145, 1149
Sec. 205(a) ... 691
Sec. 205(c) ... 133
Sec. 206 ... 133, 745, 747, 928, 1052, 1145
Sec. 301 ... 63
Sec 301(a) ... 382
Sec. 302 ... 382
Sec. 304 ... 63, 382, 1145
Sec. 307 ... 928, 1052, 1145
Sec. 308 ... 133, 413, 550, 747, 1052, 1145
Sec. 309 ... 43, 63, 133, 310, 382, 413, 550, 551, 747, 778, 819, 928, 1052, 1145
Sec. 311 ... 382
Sec. 313(a) ... 35, 127, 184, 196, 203, 408, 448, 467, 478, 487, 535, 566, 752, 809, 867, 894, 895, 896, 901, 903, 1011, 1116, 1119, 1215, 1276, 1290, 1293.
Federal Register Act of 1935, 49 Stat. 202 ... 883
Federal Water Power Act of 1920, 41 Stat. 1063 ... 470, 895, 900, 1074
Flood Control Act of 1938, 52 Stat. 1215 ... 445, 447
General Dam Act of 1906, The, 34 Stat. 386 ... 469, 632
General Dam Act of 1910, The, 36 Stat. 593 ... 470
Internal Revenue Act of 1962, 26 U.S.C. 38 ... 62, 63
Internal Revenue Code, 26 U.S.C.:
Sec. 167 ... 948
Natural Gas Act, 52 Stat. 821:
Sec. 1(b) ... 255, 262, 1208
Sec. 1(c) ... 149, 584, 586
Sec. 2 ... 521
Sec. 2.58(c) ... 28, 430
Sec. 4 ... 14, 22, 32, 110, 151, 217, 258, 268, 400, 439, 452, 456, 473, 505, 525, 563, 584, 585, 589, 591, 600, 612, 621, 776, 800, 854, 888, 899, 1124, 1143, 1212, 1287.
Sec. 4(b) ... 93, 149, 1061, 1066, 1242
Sec. 4(d) ... 36, 325, 934, 955, 1242, 1298
Sec. 4(e) ... 12, 15, 17, 20, 84, 207, 212, 399, 409, 410, 411, 508, 511, 519, 608, 613, 615, 618, 690, 834, 835, 841, 947, 955, 1228, 1268, 1280.
Sec. 5 ... 32, 110, 268, 320, 400, 401, 452, 584, 589, 591, 612, 782, 888, 966, 983
Sec. 5(a) ... 14, 32, 149, 207, 320, 367, 496, 519, 618, 1143
Sec. 7 ... 32, 92, 93, 110, 117, 120, 172, 230, 244, 250, 256, 258, 262, 266, 268, 274, 275, 279, 415, 417, 451, 452, 454, 567, 613, 614, 705, 719, 813, 983, 988, 1070, 1079, 1082, 1124, 1142, 1177, 1252, 1279.
Sec. 7(a) ... 2, 3, 75, 82, 86, 164, 291, 426, 432, 497, 540, 543, 563, 703, 708, 738, 754, 759, 760, 761, 764, 824, 826 835, 836, 859, 1062, 1072, 1088, 1100, 1130, 1288.

United States—Continued
Natural Gas Act—Continued Page
Sec. 7(b)---- 26, 73, 77, 78, 91, 98, 99, 115, 125, 142, 144, 145, 161, 197, 229, 232, 237, 288, 289, 389, 435, 439, 526, 542, 558, 563, 706, 709, 711, 748, 814, 824, 825, 869, 884, 886, 909, 910, 918, 1039, 1078, 1136, 1144, 1154, 1155, 1278, 1297.
Sec. 7(c)---- 1, 6, 9, 10, 27, 33, 34, 58, 72, 78, 79, 88, 89, 91, 98, 99, 115, 124, 130, 131, 135, 137, 138, 139, 143, 145, 146, 147, 148, 154, 155, 162, 163, 165, 166, 167, 176, 178, 184, 185, 186, 188, 190, 191, 200, 211, 219, 222, 224, 226, 228, 232, 233, 234, 235, 258, 269, 271, 272, 276, 278, 279, 280, 282, 284, 287, 288, 289, 297, 298, 306, 311, 312, 313, 314, 315, 316, 317, 319, 321, 322, 380, 385, 392, 394, 395, 396, 402, 416, 418, 419, 421, 422, 423, 429, 437, 438, 440, 442, 444, 449, 455, 473, 524, 528, 530, 531, 532, 533, 535, 536, 539, 541, 544, 546, 561, 562, 568, 583, 594, 600, 603, 612, 614, 621, 694, 695, 698, 700, 702, 706, 710, 718, 720, 721, 724, 726, 727, 728, 729, 739, 741, 742, 785, 800, 803, 813, 814, 816, 824, 856, 858, 861, 862, 864, 884, 885, 887, 890, 891, 899, 907, 908, 911, 913, 914, 915, 916, 919, 920, 1000, 1012, 1014, 1022, 1059, 1064, 1072, 1084, 1097, 1105, 1106, 1111, 1119, 1136, 1166, 1167, 1168, 1170, 1171, 1174, 1186, 1187, 1210, 1243, 1245, 1246, 1248, 1249, 1251, 1254, 1276, 1281, 1284.
Sec. 7(e)---- 1, 6, 10, 28, 34, 58, 79, 89, 99, 115, 124, 131, 137, 139, 146, 148, 155, 163, 166, 168, 176, 178, 185, 187, 189, 191, 201, 211, 229, 233, 234, 235, 258, 261, 264, 269, 272, 275, 276, 279, 280, 282, 284, 287, 289, 306, 312, 315, 317, 319, 322, 380, 392, 395, 396, 402, 416, 419, 429, 440, 444, 449, 455, 456, 473, 524, 528, 531, 533, 539, 545, 547, 562, 568, 583, 594, 600, 603, 605, 621, 696, 699, 700, 703, 706, 711, 719, 720, 722, 725, 726, 728, 729, 740, 741, 743, 785, 800, 804, 813, 815, 825, 857, 862, 865, 885, 887, 890, 891, 899, 908, 911, 914, 915, 917, 919, 922, 1001, 1013, 1015, 1022, 1064, 1066, 1072, 1085, 1097, 1105, 1107, 1111, 1144, 1151, 1155, 1157, 1158, 1162, 1164, 1166, 1168, 1171, 1245, 1246, 1253, 1254, 1277.
Sec. 8---- 63, 983
Sec. 10---- 63, 983
Sec. 14---- 983, 1082
Sec. 15---- 117, 151, 217, 400, 550, 776
Sec. 16---- 32, 63, 550, 589, 591, 983, 1082
Sec. 19(a)---- 30, 71, 219, 224, 560, 1298
Sec. 20(a)---- 150
Outer Continental Shelf Lands Act, 67 Stat. 462:
Sec 5(c)---- 456, 584, 1282, 1287
Public Law 87-647, 76 Stat. 447---- 42, 198
Public Utility Holding Company Act of 1935, 49 Stat. 803---- 128, 1048
River and Harbor Act of 1880, 21 Stat. 180---- 445
State Statutes:
California Fish and Game Code:
Sec. 5938---- 484, 492

TABLE OF RULES OF COMMISSION CITED*

	Page
1.4(d)	550
1.7	431, 717
1.7(a)	883
1.7(c)	1296
1.8	64, 152, 400, 869, 883
1.9(c)	745, 869, 1052
1.10	869
1.11(d)	25, 277, 737, 930
1.12	73, 524
1.12(e)	71, 73, 74
1.15	869
1.16	869
1.17(b)	72
1.18	152, 776
1.18(b)	723
1.18(e)	157, 160, 587, 752, 924, 1023, 1169
1.19(b)	883
1.20(b)	1124
1.28(a)	588, 723
1.29	884
1.30(c)	1, 9, 10, 26, 27, 28, 34, 58, 79, 80, 89, 117, 123, 130, 131, 136, 139, 142, 144, 146, 147, 155, 156, 163, 165, 166, 167, 176, 177, 178, 185, 186, 187, 189, 191, 198, 200, 201, 227, 228, 230, 231, 232, 234, 235, 236, 237, 248, 272, 273, 276, 278, 280, 282, 284, 286, 287, 289, 305, 312, 313, 315, 316, 317, 318, 319, 320, 322, 380, 381, 389, 392, 394, 396, 397, 402, 403, 416, 419, 421, 424, 430, 436, 438, 439, 440, 444, 449, 450, 511, 528, 529, 530, 533, 535, 538, 539, 541, 542, 543, 545, 547, 558, 559, 562, 567, 568, 694, 696, 699, 700, 701, 702, 706, 709, 712, 718, 720, 721, 724, 726, 728, 729, 730, 740, 741, 742, 743, 748, 804, 813, 815, 816, 817, 825, 826, 857, 858, 885, 890, 892, 908, 909, 910, 911, 912, 914, 915, 917, 918, 919, 920, 921, 923, 924, 1001, 1015, 1022, 1039, 1071, 1072, 1078, 1085, 1097, 1105, 1107, 1111, 1152, 1155, 1156, 1158, 1162, 1163, 1165, 1166, 1171, 1244, 1246, 1249, 1251, 1253, 1254, 1277, 1278.
1.31(d)(2)	1109
1.32	524, 737
1.33	1038
1.34	30, 71, 171
1.37(f)	152, 400
1.40(c)	543
2.55(a)	1166

*The Commission's Rules and Regulations are contained in Title 18 of the Code of Federal Regulations, Chapter 1.

Page

2.56(b) 589
2.57 1132
2.58(a) 147, 148
2.58(c) 148, 149, 166, 177, 179, 185, 187, 189, 317, 381, 393, 403, 430, 1151, 1159, 1171, 1250, 1254
4.1 ..... 54, 67, 181, 993, 995, 1016, 1032, 1074
4.4 ..... 47, 69, 181, 992, 993, 997, 1017, 1035, 1075, 1127
4.5 ..... 47, 69, 181, 992, 993, 997, 1017, 1035, 1075, 1127
4.20 ..... 54, 67, 1016
4.22 ..... 56, 69, 1017
4.23 ..... 56, 69, 1017
4.40 43
4.41 ..... 42, 777
4.50 43
4.60 43
4.70 43
4.80 43
4.82 43
4.84 43
5.1 43
9.3 ..... 127, 895
11.27(b) 806
13.1 ..... 242, 1257
16.1 43
24.1 43
24.1a(a)(1) 296
24.1a(a)(3) 296
34.1a 717, 906
34.1a(a)(1) 717
34.1a(a)(3) 906
34.1(a)(4) 1213
34.1a(b) 851, 1213
34.1a(c) 851, 1213
34.2 309
34.2(j)(1) 309
34.2(j)(2) 309
34.2(k)(2)(ii) 849, 1212
34.2(k)(3) 882, 1041
34.2(k)(4) 882, 1041
34.3 309
35 ..... 745, 747
35.3 133
35.3(c) 928
154 ..... 153, 158, 171, 439, 456, 473, 525, 563, 600, 621, 800, 805, 888, 1043, 1093, 1094, 1170, 1212, 1300
154.38(d)(i) 960
154.52 ..... 246, 1230
154.52(a) 960
154.63(b)(3)(i)(e) 327
154.91 ..... 1217, 1219, 1229, 1230, 1232, 1236
154.91(a) 600, 621
154.91(c) 1232

Page

154.91c(2) ---- 1124
154.91(d) ---- 59, 1217
154.93 ---- 32, 385, 431, 717, 718
154.94 ---- 1148, 1230
154.94(b) ---- 456, 473, 584, 1282, 1287
154.94(f) ---- 456, 473, 584, 1282, 1287
154.102 ---- 1148
157 ---- 563, 805
157.20 ---- 2, 10, 11, 28, 34, 59, 79, 89, 90, 98, 99, 125, 137, 138, 139, 140, 144, 146, 149, 156, 163, 167, 168, 176, 179, 186, 188, 190, 191, 192, 201, 227, 229, 231, 233, 234, 236, 248, 273, 277, 279, 282, 283, 285, 287, 288, 289, 290, 307, 312, 313, 316, 319, 320, 381, 393, 395. 396, 397, 403, 416, 419, 422, 424, 430, 441, 444, 449, 450, 529, 531, 533, 536, 542, 545, 547, 562, 563, 568, 695, 696, 699, 700, 703, 706, 711, 719, 720, 722, 725, 728, 730, 740, 742, 743, 768, 804, 814, 816, 826, 857, 859, 865, 886, 890. 892, 908, 912, 914, 915, 916, 920, 922, 989, 1001.
157.23 ---- 1230, 1232
157.28 ---- 72, 118

TABLE OF MISCELLANEOUS CITATIONS

	Page
American Petroleum Institute, Independent Petroleum Association of America and Mid-Continent Oil & Gas Association, "Joint Association Survey"	609
Appropriations, Hearings before Subcommittee of the House Committee on, 87th Cong., 1st Sess. pt. 1 (1962)	446
Appropriations, Hearings before Subcommittee of the Senate Committee on, 87th Cong., 1st Sess. pt. 2 (1962)	446
Appropriations for 1956, Public Works, House Hearings on, Eastern Section, Part I, 84th Cong., 1st Sess	673
Chase Manhattan Bank, "Capital Investment by the World Petroleum Industry"	611
Chase Manhattan Bank, "Petroleum Industry 1959"	609
Chief of Engineers, "Comprehensive Plan for Ohio and Lower Mississippi Rivers", H. R. Flood Control Document No. 1, 75th Cong., 1st Sess. (1937)	446
Congressional Record, Vol. 56, 65th Cong., 2nd Sess	470
Congressional Record, Vol. 79, 74th Cong., 1st Sess	470
Executive Order No. 10485	183
Federal Power Commission, 3rd Annual Report (1923)	1074
Federal Power Commission, 41st Annual Report (1961)	77
House Document No. 1350, 60th Cong., 2nd Sess. (1909)	469
House of Representatives Bill No. 408, 64th Cong., 1st Sess. (1916)	470
House of Representatives Bill No. 715, 65th Cong., 2nd Sess. (1918)	470
House of Representatives Bill No. 1318, 74th Cong., 1st Sess. (1935)	470
House of Representatives Bill No. 3184, 66th Cong., 1st Sess. (1919)	470
House of Representatives Bill No. 8716, 64th Cong., 1st Sess. (1916)	470
House of Representatives Bill No. 14893, 63rd Cong., 2nd Sess. (1914)	470
House of Representatives Bill No. 16053, 63rd Cong., 2nd Sess. (1914)	470
House of Representatives Bill No. 16673, 63rd Cong., 2nd Sess. (1914)	470
Independent Petroleum Association of America, Cost Study Committee, "October, 1959 Report on Cost Study"	611
Interstate and Foreign Commerce, Reports before the House Subcommittee on, re H. R. 5309, 86th Cong., 1st Sess. (1959)	661
Johnson, Nicholas, "Producer Rate Regulations Natural Gas Certification Proceedings: CATCO in Context", 62 Columbia Law Review 773	616, 617, 618
National Water Resources, Select Committee on, United States Senate, by the Department of Agriculture, Committee Print No. 13, 86th Cong., 2nd Sess. (1960)	646
"Oil and Gas Journal, The"	611
Order No. 174–B, 13 FPC 1576 (1954)	1232, 1233
Order No. 190, 16 FPC 492 (1956)	60, 1231, 1232, 1233, 1234
Order No. 232–A, 25 FPC 609 (1961)	32
Order No. 242, 27 FPC 339 (1962)	32
Pacific Lighting Corporations' Supplement to the Annual Report for 1962	1133

Page

Pacific Northwest Coordination Agreement, Sec. 6(k) 879
"Record-Courier, The", of Baker, Oregon, September 4, 1958 577
Ross, Homer R., "How Practical is the Seaboard Formula", Public Utilities Fortnightly, Vol. 71, No. 1 (1963) 342
Senate Bill No. 1419, 65th Cong., 2nd Sess. (1917) 470
Senate Bill No. 3331, 64th Cong., 1st Sess. (1916) 470
Senate Bill No. 6413, 63rd Cong., 3rd Sess. (1914) 470
Senate Document No. 66, 76th Cong., 1st Sess. (1939) 661, 662
Senate Document No. 438, 60th Cong., 1st Sess. (1907) 469
Statement of General Policy No. 61–1, as amended, 24 FPC 818 (1960) .. 3, 4, 22, 39, 152, 161, 170, 172, 175, 206, 217, 267, 275, 587, 589, 590, 595, 606, 607, 787, 834, 1084, 1091, 1181, 1188, 1196, 1198, 1199.
Statement of General Policy No. 61–1, 1st Amendment to, 24 FPC 902 (1960) 269
Statement of General Policy No. 61–1, 2nd Amendment to, 24 FPC 1107 (1960) 29, 152, 157, 170, 217, 589, 753, 925, 990, 1024, 1043, 1091, 1092, 1094, 1113, 1169
Statement of General Policy No. 61–1, 4th Amendment to, 26 FPC 661 (1961) 220, 225, 267
Statement of General Policy No. 61–1, 5th Amendment to, 28 FPC 441 (1962) 172, 175, 591, 592, 595, 599, 606
"Statement of Idaho Power Company and Morrison Knudsen, Inc. Presented to Robert D. Holmes, Governor of Oregon, Salem, Oregon, September 16, 1958" 578
United States Department of Commerce, Weather Bureau, Technical Paper No. 37, Plate 2 627
"World Oil Magazine" 609, 611

FOREWORD

The Federal Power Act was originally enacted as the Federal Water Power Act, approved June 10, 1920 (41 Stat. 1063, 16 U.S.C. 791–823). The Federal Power Commission was reorganized January 1, 1931, as an independent Commission under the act approved June 23, 1930 (46 Stat. 797). By title II of the Public Utility Act of 1935, approved August 26, 1935 (49 Stat. 838), the original Federal Water Power Act was made part I of the "Federal Power Act" and parts II and III were added. The Federal Power Act was amended May 28, 1948 (62 Stat. 275), August 7, 1953 (67 Stat. 461), August 15, 1953 (67 Stat. 587), June 4, 1956 (70 Stat. 226), and August 28, 1958 (72 Stat. 941 at 947). The Commission also administers the Natural Gas Act, approved June 21, 1938 (52 Stat. 821, 15 U.S.C. 717–717w), as amended February 7, 1942 (56 Stat. 83, 15 U.S.C. 717f), July 25, 1947 (61 Stat. 459, 15 U.S.C. 717f), March 27, 1954 (68 Stat. 36, 15 U.S.C. 717(c)), and August 28, 1958 (72 Stat. 941 at 947; 15 U.S.C. 717r), and has certain duties under the Tennessee Valley Authority Act, approved May 18, 1933 (48 Stat. 1075), and amendments thereto; the Bonneville Act, approved August 20, 1937 (50 Stat. 731); the Fort Peck Act, approved May 18, 1938 (52 Stat. 403); and under various Flood Control and River and Harbor Acts (notably the Flood Control Act of 1944, approved December 22, 1944 (58 Stat. 887)), and other statutes, as well as Executive Orders.

This volume, the twenty-ninth of a series, contains all the formal opinions and accompanying orders of the Federal Power Commission rendered, January 1, 1963, to June 30, 1963, inclusive. In addition to the formal opinions, there have been included intermediate decisions which have become final and selected orders of the Commission issued during such period.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP63–72

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 2, 1963)

On September 20, 1962, El Paso Natural Gas Company (Applicant) filed in Docket No. CP63–72 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 6 miles of 16-inch O.D. pipeline, together with appurtenant facilities, looping a segment of its North Seattle Lateral in Snohomish County, Washington, all as more fully set forth in the application on file with the Commission.

The application shows that the North Seattle Lateral is utilized by Applicant for the sale and delivery of natural gas to Washington Natural Gas Company (Washington Natural) for resale and distribution by the latter in the North Seattle area. It appears that the proposed facilities are necessary in order to enable Applicant to meet Washington Natural's estimated increased peak day requirements. The application indicates that the design capacity of the present North Seattle facilities is approximately 50,000 Mcf per day and that estimated peak day requirements of Washington Natural for the area served by Applicant's North Seattle facilities for the 1962–63, 1963–64 and 1964–65 heating seasons are 60,551 Mcf, 66,963 Mcf and 73,428 Mcf, respectively.

The total estimated cost of the proposed project is $363,000, which cost will be financed out of current working funds, supplemented as necessary by short-term bank loans.

Pursuant to due notice, a public hearing was held in Washington, D.C., on December 11, 1962, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized in paragraph (A) above shall be constructed and placed in actual operation by Applicant, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

NORTHERN NATURAL GAS COMPANY, DOCKET NOS. CP62-85, CP62-178; IOWA ELECTRIC LIGHT AND POWER COMPANY, DOCKET NO. CP62-119; AMERICAN GAS COMPANY OF WISCONSIN, INC., DOCKET NO. CP63-34; WISCONSIN SOUTHERN GAS COMPANY, INC., DOCKET NO. CP63-11; CITY OF TIPTON, IOWA, DOCKET NO. CP63-54; GREAT PLAINS NATURAL GAS CO., DOCKET NO. CP63-78

ORDER PERMITTING WITHDRAWAL OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 7(a) OF THE NATURAL GAS ACT

(Issued January 2, 1963)

On September 28, 1962, Great Plains Natural Gas Company (Great Plains) filed an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Northern Natural Gas Company (Northern) to establish physical connection of its transmission facilities with the distribution facilities proposed to be constructed by Great Plains and to sell and deliver to the latter natural gas for resale in 31 communities in Minnesota, 2 communities in South Dakota, and 1 community in North Dakota.

Also, on September 28, 1962, Applicant filed a petition to intervene in the consolidated proceedings of Northern Natural Gas Company, *et al.*, Docket No. CP62–85, *et al.*, and a motion to consolidate the Section 7(a) application of Great Plains with the aforementioned proceedings. In its order issued October 19, 1962, the Commission granted the petition and motion of Great Plains.

On November 13, 1962, Great Plains filed a motion for withdrawal of its application in Docket No. CP63–78. In its motion Great Plains states that the feasibility of its project depended upon interruptible sales to two power plants and that it has not been able to execute a contract with one of the plants. Because of this unexpected event the motion indicates that it has become necessary for Great Plains to abandon its plan for the project as proposed in its application in Docket No. CP63–78. In view of the fact that the project must be revised accordingly, Great Plains states that it cannot present a full and complete case during the hearing now in progress. Therefore, Great Plains moves for withdrawal of its application herein.

The Commission finds:

Good and sufficient cause exists to allow the withdrawal of the application for an order pursuant to Section 7(a) of the Natural Gas Act filed by Great Plains Natural Gas Company on September 28, 1962.

The Commission orders:

Great Plains Natural Gas Company is hereby allowed to withdraw its application for an order pursuant to Section 7(a) of the Natural Gas Act, directing Northern Natural to establish physical connection between its transmission facilities and proposed facilities of Great Plains and to sell and deliver natural gas to Great Plains for resale in certain specified communities.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

THE SHAMROCK OIL AND GAS CORPORATION, DOCKET NO. G–14077

ORDER DENYING MOTION TO TERMINATE PROCEEDING

(Issued January 2, 1963)

The Shamrock Oil and Gas Corporation (Shamrock) on February 20, 1962, as supplemented June 1, 1962, filed a motion requesting the Commission to terminate the proceeding in Docket No. G–14077 and to terminate the refund obligation with respect thereto. In such proceeding the Commission suspended and subsequently permitted to become effective subject to refund Shamrock's proposed increased rate of 12.5¢ [1] per Mcf at 14.65 psia for sales of natural gas to Northern Natural Gas Company at the tailgate of Shamrock's McKee Gasoline Plant in Sunray, Moore County, Texas (Texas Railroad Commission District No. 10).

In support of its motion, Shamrock presented certain company-wide cost-of-service data purporting to show that its average unit jurisdictional costs were in excess of its comparable revenues for 1960. Shamrock also states that the increased rate of 12.5¢ per Mcf involved herein does not exceed the applicable area price level of 11.0¢ per Mcf for increased rates as established by the Commission's Statement of General Policy No. 61–1, as amended, based on its contention that the area price level is applicable at the wellhead instead of the tailgate of the processing plant. Thus, Shamrock claims that if 2.52¢ per Mcf is deducted from the 12.5¢ per Mcf rate for the cost of gathering and compres-

[1] Includes 1.0¢ per Mcf for compression, but does not include tax reimbursement.

sion, the resulting wellhead rate is 9.98¢ per Mcf which is below the area price level of 11.0¢ per Mcf.

Even if we were processing increased rate filings by independent producers on a cost-of-service basis, as we are not,[2] we should not set aside the suspension of an over ceiling rate until any purported company-wide cost-of-service submitted by a producer could be fully tested at a hearing. In fact, however, as we announced in *Phillips* we are considering all independent producer rate increases filed since the date of that decision (except those the subject of settlement proceedings) in area rate proceedings.

With respect to Shamrock's other contention, the Statement of General Policy No. 61–1 makes it clear that the area price levels set forth therein are applicable to pipeline quality gas as that term is generally understood in each area. Inasmuch as the gas, which is later processed at Shamrock's plant, feeds into Shamrock's gathering lines at pressures between 110 and 200 psig, it would appear that such gas cannot be considered pipeline quality gas. Under these circumstances, the applicable area rate level is properly comparable with the price of Shamrock's gas at the tailgate of the plant. There is thus no justification under the policy statement for permitting Shamrock to charge a rate in excess of the 11.0¢ per Mcf ceiling rate without refund obligation pending determination of the just and reasonableness of Shamrock's rate in an area rate proceeding.

The Commission finds:

For the reasons hereinabove stated, Shamrock's motion to terminate the proceeding in Docket No. G–14077 should be denied.

The Commission orders:

Shamrock's motion to terminate the proceeding in Docket No. G–14077 is hereby denied.

[2] The only exception to this rule is with respect to a number of Section 4(e) proceedings set for hearing prior to the *Phillips* decision where the making of the record was well advanced as of that date.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. G–14562; CONTINENTAL OIL COMPANY, DOCKET NO. G–13680; MAGNOLIA PETROLEUM COMPANY (SOCONY MOBIL COMPANY), DOCKET NO. G–13827; NEWMONT OIL COMPANY, DOCKET NO. G–13948

ORDER GRANTING MOTION TO OMIT THE INTERMEDIATE DECISION, APPROVING PROPOSED SETTLEMENT AND ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 2, 1963)*

On January 8, 1962, the Presiding Examiner, after having heard the matters then embodied in the above-docketed applications, and briefs having been filed, issued his Initial Decision dismissing all of the applications. In brief, there was then proposed (1) a so-called leasehold acquisition by Tennessee Gas Transmission Company (Tennessee) of offshore Louisiana gas producing acreage held by Continental Oil Company, Socony Mobil Company and Newmont Oil Company, hereinafter referred to as MCN,[1] and (2) the construction and operation, by Tennessee, of approximately 23 miles of 12-inch pipeline so as to enable it to transport to a point on its main transmission system volumes of gas to be

*Amended by order issued February 11, 1964, 31 FPC 411.

[1] Block 46 Field, Vermilion Parish and the East Cameron Block 64 Field.

produced from the aforesaid acreage. The Presiding Examiner in dismissing the applications found, among other things, that the method of acquiring the MCN gas under the so-called leasehold acquisition proposal was not required by the public convenience and necessity.

By our order of March 26, 1962, 27 FPC 610, we accepted amended filings to all of the instant applications and reopened and remanded the proceeding to the Presiding Examiner. In essence, these amended filings reinstated gas purchase contracts entered into by the applicants in 1957 and filed with this Commission in these docketed applications in the latter part of 1957. Instead of acquiring the MCN gas under a so-called leasehold acquisition, it was here proposed that Tennessee purchase the MCN gas on a per Mcf basis at a proposed initial price of 21.4¢ per Mcf at 15.025 psia with a 2¢ per Mcf periodic escalation every four years. Additionally, Tennessee sought, in Docket No. G–14562, authority to construct and operate the same facilities heretofore requested but denied by the Examiner.

On June 5, 1962, hearing on the applications as amended commenced at which time testimony of witnesses for the producers was presented. Motions to strike testimony and exhibits and other motions related to such testimony and exhibits having been disposed of by the Examiner, the hearing was recessed upon request of all parties for the purpose of exploring the possibility of settlement. On November 8, 1962, the Presiding Examiner certified to us a proposed settlement relating to the price to be paid for the MCN gas, filed on October 29, 1962, along with a petition filed by the producer applicants on the same date requesting the issuance of an order granting permanent certificates of public convenience and necessity in accordance with the amended applications as modified by the settlement proposal.[2] On November 26, 1962, Tennessee, in view of the filing of the settlement proposal, filed a motion requesting omission of the intermediate decision procedure insofar as its application for authorization to construct and operate certain facilities, as proposed in Docket No. G–14562, is concerned.

Under the settlement agreement now before us the producer applicants propose an initial price of 20.625¢ per Mcf at 15.025 psia, including Louisiana State tax reimbursement at 1.625¢ per Mcf, where the gas to be delivered to Tennessee is produced from that portion of the MCN properties which is subject to the taxing jurisdiction of the State of Louisiana. In respect to the gas to be delivered to Tennessee from that portion of the MCN properties where the applicability of Louisiana state taxes is yet uncertain, the initial price would consist of 19.0¢ per Mcf with the escrowing by Tennessee of an additional 1.625¢ per Mcf until such issue with respect to the applicability of the tax, is finally adjudicated. The settlement agreement contains specific provisions for the distribution to Tennessee of amounts held in escrow in the event that the aforementioned portion of the MCN properties is finally adjudicated as being within the federal domain. In this regard, the producer applicants have reserved the right to file for reimbursement of up to 50 percent of any severance tax which the federal government might levy. Finally, the agreement provides for a moratorium on future price changes for the MCN gas until June 30, 1967, except that the settlement prices shall be subject to upward or downward adjustment during the moratorium period according to any specifically applicable area rate or rates ultimately determined in the South Louisiana Area Rate Proceeding, Docket No. AR61–2, *et al.*, prospectively from the date of such determination. We should here point out, however, that although the settlement agreement seeks to antici-

[2] This petition refers also to a settlement proposal submitted directly to the Commission in Docket Nos. G–17649, G–17625, and G–17765, which proceedings were not before the Presiding Examiner in the instant consolidated proceedings. Our order here, therefore, is not dispositive of those applications.

pate in part the nature of our final determinations in Docket No. AR61–2, *et al.*, our definitive interpretation of "specifically applicable area rate or rates" will obviously have to await conclusion of the area proceeding.[3]

In addition to the foregoing, the settlement agreement augments the contract period of less than 48 months within which Tennessee can take gas previously paid for but not taken by extending said period to 48 months from the date any such gas is paid for but not taken.

We find that this proposed settlement is in the public interest and should be approved as hereinafter provided. We deem it particularly important that the settlement achieves a price stability for a reasonable period of time. The proposal is consistent with the area pricing approach to producer regulation and no objections or petitions in opposition having been filed to the settlement agreement or to the producer applicants' petition for the immediate issuance of permanent certificates in their respective docketed applications, we shall issue certificates to each of said producer applicants conditioned upon the terms of the settlement agreement.

The only other matter remaining for consideration is the application of Tennessee in Docket No. G–14562. No party to this proceeding has filed an answer in opposition to Tennessee's motion to omit the intermediate decision in respect to its docketed application. The record also discloses that no party has opposed the issuance of a certificate for the construction and operation of the facilities proposed in Docket No. G–14562, as such. Dismissal of Tennessee's application by the Presiding Examiner in his decision of January 8, 1962, *supra*, stemmed from the opposition of the Commission's staff and interested interveners to the manner in which Tennessee proposed to acquire the MCN gas, i.e., the so-called leasehold acquisition. In view of the premises, we shall grant the motion for omission of the intermediate decision procedure and in conjunction therewith issue a certificate of public convenience and necessity to Tennessee in Docket No. G–14562.

The Commission further finds:

(1) Tennessee Gas Transmission Company is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) Continental Oil Company, Socony Mobil Company and Newmont Oil Company are or upon initiation of the proposed sale to Tennessee will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission and are or will be "natural gas companies" within the meaning of the Natural Gas Act.

(3) The sales of natural gas proposed by the applications, as amended, are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The construction and operation of the facilities proposed by Tennessee and the sales proposed by each of the producer applicants, as amended, and as further modified by the settlement agreement, are required by the public convenience and necessity and certificates should be issued to each of them as hereinafter ordered.

The Commission orders:

(A) The motion for waiver of the intermediate decision procedure filed by Tennessee is hereby granted.

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[3] For further reflections of the Commission's views in this regard, see our order approving a proposed settlement in Texaco Inc., *et al.*, Docket No. G–13169, *et al.*, issued July 30, 1962, 28 FPC 247.

(B) The settlement agreement filed October 29, 1962, is hereby approved and accepted to be effective as of the date of commencement of deliveries.

(C) Certificates of public convenience and necessity are hereby issued to each of the applicants for the sale of natural gas in interstate commerce for resale as proposed, and for the construction and operation of facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in their respective applications, as amended, and as further modified by the settlement agreement.

(D) The certificates issued by paragraph (C) above, are granted upon the express condition that applicants fully comply with the terms of the settlement agreement.

(E) The certificates herein issued are not transferable and shall be effective only so long as each of the applicants continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(F) Within 30 days from the date of issuance of this order, each of the MCN companies shall make such filings under their respective rate schedules as are required to make effective the terms of the settlement agreement.

(G) This order is without prejudice to any findings or orders which have been, or may be, made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by each of the MCN companies, the Commission staff, or any affected party herein, in any proceeding now pending, or hereafter instituted by or against each of the MCN companies, or any other companies, person, or parties affected by this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NOS. G–16842, CP60–94; LOWELL GAS COMPANY, DOCKET NO. CP61–9; TENNESSEE NATURAL GAS LINES, INC., DOCKET NO. CP61–27; CENTRAL ILLINOIS ELECTRIC AND GAS COMPANY, DOCKET NO. CP61–122; MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. CP62–116; ALLIED GAS COMPANY, DOCKET NO. CP62–132; ALABAMA-TENNESSEE NATURAL GAS COMPANY, DOCKET NO. CP62–133; THE VILLAGE OF PROVENCAL, LOUISIANA, DOCKET NO. CP62–152; CITY OF MARSHALL, ILLINOIS, DOCKET NO. CP62–187; CITY OF CASEY, ILLINOIS, DOCKET NO. CP62–188; CITY OF MARTINSVILLE, ILLINOIS, DOCKET NO. CP62–189; CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, DOCKET NO. CP62–168

ORDER REQUIRING PRESIDING EXAMINER TO RENDER DECISION ON DEFERRED ISSUES

(Issued January 2, 1963)

On November 9, 1962, the Presiding Examiner issued a "Decision on the First Issues" in the above-styled proceedings. The Presiding Examiner restricted his findings in the above decision to issues within one of the following three categories: (1) expansion of gas deliveries as proposed in these proceedings, (2) the adequacy of Tennessee's gas supply to meet such an expansion and (3) related and incidental problems.

The Presiding Examiner deferred for later decision the question relating to whether or not Tennessee Gas Transmission Company (Tennessee) requires all

of the additional capacity it has requested in these proceedings to meet the requirements of its customers. Similarly deferred by the Presiding Examiner was the question pertaining to Tennessee's acquisition of its Ship Shoal reserves. The Ship Shoal reserves consist of gas purchased "in place" by Tennessee from acreage located on federal territory offshore Louisiana.

Tennessee in the exceptions it has filed to the Examiner's "Decision on the First Issues" raises a question concerning the propriety of requiring it to undertake additional obligations without its being fully cognizant of all of the terms that may be attached to the certificate tendered to it for acceptance because of the deferral of important issues by the Presiding Examiner.

Tennessee at page 3 of its exceptions states as follows:

> In essence, the Examiner's Decision would require Tennessee to undertake to meet additional obligations on a long term basis, without first knowing whether the additional system capacity needed to meet such obligations will be authorized. *It is Tennessee's position that it is entitled to know what the terms of the certificate are before accepting such certificate.* * * * [Emphasis added.]

The Commission is of the opinion that there is considerable merit to this issue raised by Tennessee in its exceptions. Tennessee is entitled to know what additional capacity it will be authorized to build into its system before it is required to undertake to meet those additional obligations proposed by the Presiding Examiner in his "Decision on the First Issues."

Tennessee submitted the Ship Shoal reserves in support of its systemwide gas supply. Hence, the importance of these large reserves to the proposed expansion of service by Tennessee is also an integral part of these proceedings. Hence, Tennessee should also have the benefit of knowing what position the Commission will take in connection with this proposal before it is required to undertake the additional obligations proposed by the Presiding Examiner.

The Commission is of the opinion that the issues deferred by the Presiding Examiner are vital and important to the rendering of a decision by it that would require Tennessee to undertake additional service. The Presiding Examiner has already noted the expanded gas requirements of Tennessee's existing and new customers warranted expeditious attention. Hence, the Commission feels that it is necessary to require the Presiding Examiner to expeditiously pass upon those issues he has deferred in order that it may act promptly with respect to all the important issues involved in these proceedings.

The Commission orders:

That the Presiding Examiner be and hereby is required to augment his "Decision on the First Issues" by ruling upon and making findings, as expeditiously as possible, on those issues he has specifically deferred therein.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP61-143; NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP61-149; ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP61-163

FINDINGS AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 3, 1963)

On November 7, 1960, as amended on October 4, 1961, November 9, 1961, and October 25, 1962, Colorado Interstate Gas Company (Colorado) filed in Docket

No. CP61–143 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a short-term field sale of natural gas to Arkansas Louisiana Gas Company (Arkansas Louisiana), all as more fully set forth in the application, as amended, on file with the Commission.

Colorado proposes to sell up to 25,000 Mcf of natural gas per day, through December 31, 1963, to Arkansas Louisiana. Said sale will be effected by an exchange arrangement with Natural Gas Pipeline Company of America (Natural) through existing interconnections of facilities of Colorado and Natural in the Mocane field, Oklahoma. Colorado will deliver gas directly to Natural and the latter will deliver equivalent volumes to Arkansas Louisiana at a proposed new interconnection between Natural and Arkansas Louisiana in Beckham County, Oklahoma.

On November 18, 1960, as amended on October 9, 1961, November 14, 1961, and October 11, 1962, Natural filed in Docket No. CP61–149, and on December 8, 1960, as amended on September 28, 1961, November 6, 1961, and October 1, 1962, Arkansas Louisiana filed in Docket No. CP61–163, applications pursuant to Section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing the above-described interconnection and exchange of natural gas.[1]

Colorado states that the proposed sale is to relieve a short-term excess gas supply situation. Said excess gas is the result of a take-or-pay situation caused by the fact that Colorado's Provo project (Docket No. G–16235, *et al.*) is not in operation.

The sales of natural gas to Arkansas Louisiana will be made at a rate of 14.5 cents per Mcf.

The estimated cost of facilities for the interconnection between Natural and Arkansas Louisiana in Grady County, Oklahoma, is $2,800. Natural will construct the necessary facilities and will be reimbursed by Arkansas Louisiana for the cost incurred.

The subject sale of gas to Arkansas Louisiana is to be made pursuant to an agreement, dated October 20, 1960. The subject exchange of natural gas is to be made pursuant to an agreement, dated October 20, 1960, as amended, among Colorado, Arkansas Louisiana, and Natural.

By letters, dated February 16, 1961, each Applicant was granted temporary authorization, limited to the period ending December 31, 1961. By subsequent letters the temporary authorizations were extended through December 31, 1962.

Pursuant to due notice, a public hearing was held in Washington, D.C., on December 20, 1962, respecting the matters involved in and the issues presented by the applications, as amended, herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of June 5, 1945, in Docket No. G–294 (4 FPC 936).

[1] The amendments filed October 4, 1961, October 9, 1961, and September 28, 1961, by Colorado, Natural, and Arkansas Louisiana, respectively, propose to change the interconnection and delivery and receipt of natural gas between Natural and Arkansas from the originally proposed point in Beckham County to a point in Grady County, Oklahoma.

(2) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–235 (3 FPC 830).

(3) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 26, 1943, in Docket No. G–252 (3 FPC 910.)

(4) The facilities hereinbefore described, as more fully described in the application in Docket No. CP61–149, are to be used in the exchange and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Natural are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The subject sale of natural gas by Colorado to Arkansas Louisiana and the subject exchange and delivery of natural gas among Colorado, Natural, and Arkansas Louisiana, hereinbefore described, as more fully described in the applications, as amended, in Docket Nos. CP61–143, CP61–149 and CP61–163, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such proposed sale, exchange and delivery are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(6) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(7) The construction and operation of the subject facilities by Natural, the subject sale of natural gas by Colorado to Arkansas Louisiana and the subject exchange and delivery of natural gas among Colorado, Natural and Arkansas Louisiana are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(8) The certificates hereinafter issued to Applicants should be without prejudice to the final determination of Arkansas Louisiana's application in Docket No. CP62–83.

(9) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(10) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued authorizing Colorado Interstate Gas Company to sell up to 25,000 Mcf of natural gas per day to Arkansas Louisiana; authorizing Natural Gas Pipeline Company of America to construct and operate its subject facilities, and authorizing Arkansas Louisiana Gas Company, Colorado Interstate and Natural to exchange natural gas as set forth in the agreement, dated October 20, 1960, as amended, among the three Applicants, all as hereinbefore described and as more fully described in the applications, as amended, herein, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above are limited in duration to a period extending through December 31, 1963.

(C) The certificates issued by paragraph (A) above shall be without prejudice to the final determination of Arkansas Louisiana's application in Docket No. CP62–83.

(D) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

SLADE, INC. (OPERATOR), DOCKET NOS. G–19986 AND RI61–10; SLADE, INC., DOCKET NO. RI60–147; SLADE, INC. (OPERATOR), ET AL., DOCKET NO. RI60–179; AREA RATE PROCEEDING, DOCKET NO. AR61–1

OPINION AND ORDER PROVIDING FOR CONSOLIDATION OF PROCEEDINGS IN APPROPRIATE AREA RATE PROCEEDINGS

(Issued January 3, 1963)*

Syllabus

1. Citing Opinion No. 369, [McCommons filing], Commission *finds* reasonableness of proposed rates cannot be determined on present record showing only company-wide costs of one venturer with no costs of joint ventures as such. P. 13.
2. In determining reasonableness of plant sales rate, it is not proper to employ average unit cost of one venturer's gas production in various joint ventures, when only two such ventures are involved in plant sales. P. 13.
3. Although reaffirming policy to decide cases pending prior to area rate proceeding on cost of service basis, Commission *concludes* that under special circumstances here such determination should be made in area rate proceedings. P. 14.
4. Commission *consolidates* proceedings with appropriate area rate proceedings for determination of reasonableness of proposed increased rates suspended under Section 4(e) of The Natural Gas Act. P. 14.

William J. Grove and *Carroll L. Gilliam* for Slade, Inc.

J. Harry Mulhern, Edward S. Kirby, John F. McDonald and *William R. Duff* for Public Service Electric and Gas Company.

Julius C. Meier for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

O'CONNOR, *Commissioner:* These consolidated proceedings involve proposed increased rates which were tendered for filing by Slade, Inc. (Slade), suspended, and set for hearing. The hearing having been concluded and a proposed decision issued, the proceedings are pending before us on exceptions to the decision of the Presiding Examiner issued November 1, 1961. The Examiner found that Slade's average jurisdictional unit cost of service applicable to wellhead sales, based on a 1958 test period, is 17.7443¢ per Mcf, and that its jurisdictional unit cost of

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*Designated Commission Opinion No. 376. Initial decision appears on p. 15. Reconsideration denied by order issued February 27, 1963, FPC 408. Petition for Review dismissed on July 11, 1963, in *Slade, Inc.* v. *F.P.C.* (CA5 No. 20497).

service applicable to gas compressed and sold at Slade's Sinton Dome plant is 17.4154¢ per Mcf. Because the unit costs thus determined were in excess of Slade's proposed rates, the Examiner proposed that all of the proceedings herein be terminated and that Slade be discharged of its obligation to refund any excess charges with respect to the proceeding in Docket No. G–19986 in which Slade's increased rate had been made effective subject to refund.

Slade is a Delaware Corporation with offices at Orange, Texas, which performs geological and engineering services, explores for and produces oil and gas, and operates gathering lines and a compressor plant in the Sinton Dome area, San Patricio County, Texas. Slade's production operations involve various joint ventures in connection with which it acts both as operator, on behalf of the joint venturers, and in addition as a joint venturer with a total working interest of less than 10%. Four rate increases are involved here as follows:

(1) Docket No. G–19986 involves suspension on October 30, 1959, of Supplement No. 4 to Slade's FPC Gas Rate Schedule No. 5 representing an increase from 12.12268 cents to 15.0952 cents per Mcf for gas sold to Tennessee Gas Transmission Company from the Sinton Dome compressor plant (Texas Railroad District No. 4). The compressor plant is owned by Slade and the gas sold therefrom comes in part from wells in which Slade is a joint venturer with other parties and in part from purchased gas. The increased rate went into effect subject to refund on August 3, 1960.

(2) Docket No. RI61–10 involves suspension on July 28, 1960, of Supplement No. 5 to Slade's FPC Gas Rate Schedule No. 5, representing an increase to 17.24347 cents per Mcf for the same sale.

(3) Docket No. RI60–147 involves suspension on February 18, 1960, of Supplement No. 5 to Slade's FPC Gas Rate Schedule No. 4, representing an increase from 11 cents to 17 cents per Mcf for wellhead sales of gas by joint ventures of which Slade is operator and in which it owns 12.5% and 6.25% working interests, respectively, from the Spraberry Trend area, Glasscock and Reagan Counties, Texas (Texas Railroad District No. 7–C).

(4) Docket No. RI60–179 involves suspension on March 9, 1960, of Supplement No. 4 to Slade's FPC Gas Rate Schedule No. 6, representing an increase from 10 cents to 17.2294 cents per Mcf for wellhead sales of gas by a joint venture, different from the joint ventures involved in Rate Schedule No. 4, of which Slade is operator and in which it owns a 6.25% interest, from the Spraberry Trend area, Reagan County, Texas (Texas Railroad District No. 7–C).

With respect to the last three dockets Slade did not file a motion pursuant to Section 4(e) of the Act to place its proposed rates into effect, and it is still collecting the prior rates.

At the hearing Slade presented a company-wide cost of service for the test year 1958 deriving separate costs for (1) its oil and gas operations and (2) the compressor plant. Staff did not present any evidence at the hearing.

Slade's production operations consist of a series of joint ventures in connection with which Slade acts both as operator of the joint venture properties, and as a joint venturer with a varying percentage of interest ownership in each joint venture.[1] Moreover, the participants in the various joint ventures are not the same for each joint venture and the percentage of interest ownership of each participant varies from one joint venture to another. Slade, as operator of the properties involved herein, has filed rate schedules covering all working interests in such properties. Thus, all of the participants in each of the joint ventures are covered by Slade's rate filings.

[1] In addition to the interests of Slade mentioned above under Rate Schedule Nos. 4, 5, and 6, Slade as a joint venturer also owns interests of 12.5%, 6.25%, and 9.375% in gas sold pursuant to its Rate Schedule Nos. 1, 2, and 3, respectively.

In the instant case Slade has not purported to justify the increased prices for the two wellhead sales by any determination of the cost of the particular joint ventures engaged in making these sales. Instead it has presented a company-wide cost of service relating merely to its own net working interest in gas production arising out of the various joint ventures in which it participates, including but not limited to those involved here. In our recent Opinion No. 369, 28 FPC 897, we made clear with respect to the *McCommons filing* (William E. McCommons d/b/a McCommons Exploration Company, *et al.*, Docket No. RI62–476) the difficulties in attempting to make any cost evaluation on the basis of the composite cost of a limited number of joint ventures with or without differing ownership interests. But even assuming a proper determination of just and reasonable rates could be made on any such basis we think it clear that the costs utilized must be those of the joint ventures as such, (as McCommon's at least attempted to do), and not just the company-wide costs of one of the joint venturers, particularly one having only a minor interest in the ventures. Otherwise the justness and reasonableness of a rate will depend solely upon the success or lack of success in the overall gas production operations of the particular venturer chancing to be the operator, rather than upon any basis rationally related to the production entity as a whole.[2] In short, the reasonableness of the rates proposed by Slade under its FPC Gas Schedule Nos. 4 and 6 cannot be determined on the basis of the present record which purports only to show the company-wide costs of a venturer, Slade, owning minor interests in the production ventures there in issue.

Similarly, we cannot determine the justness and reasonableness of the rate for Slade's plant sales under its FPC Gas Rate Schedule No. 5 because Slade's plant cost of service includes costs for gas produced by certain joint ventures in which Slade has an interest and is the operator, calculated on the basis of Slade's company-wide production costs in all of the separate joint ventures in which it participates. As indicated above, it is not proper to employ the average unit cost for all of Slade's gas production in various joint ventures, when only two such ventures are involved in gas sold from the plant. In addition, the record is unclear as to whether Slade's company-wide unit production costs were applied to *all* of the gas processed by the Sinton Dome plant coming from the two production ventures in which Slade had an interest, or only from *Slade's share* of this gas, or, in the latter event, the manner, if any, in which the gas costs of that part of the gas from these two ventures attributable to the other venturers, were included in the calculated gas costs.

Because the present record does not permit a proper determination of the justness and reasonableness of the rates involved herein, we are faced with the problem of deciding whether to remand the proceedings to the Examiner for the taking of additional evidence or to determine the lawful rates in connection with area rate hearings. As we mentioned in Opinion No. 365, the *Hunt* case,[3] it is

[2] It is recognized that this question of working interests permeates the gas production business and that many of the largest producers as well as the smaller ones will have only fractional interests in joint ventures involving a number of leases. But in the usual producer case coming before us, the deviations from the cost norm in those situations where the producer whose "rates" are in issue is an operator with only a minor interest, other than a sole proprietor, can be expected to even out over all of the producer's interests. This is clearly not the case with a very small operator like Slade. If its company-wide costs were allowed to fix the rate of the joint ventures for which it serves as operator we would be encouraging a situation in which it would be to the interests of joint venturers to choose as their "operator" the member of the group with highest individual costs.

[3] Opinion No. 365 issued October 17, 1962, in *Hunt Oil Company, et al.*, Docket No. G–9065, *et al.*, 28 FPC 623.

our policy to decide cases, such as the instant case,[4] which were pending before the Commission prior to the commencement of area rate proceedings on the basis of cost of service evidence. We reaffirm that policy, but for the reasons set forth below conclude that under the special circumstances of this case it would be more appropriate to make these determinations in connection with area rate proceedings.

The two Slade rate schedules involving wellhead sales relate to sales from Texas Railroad District No. 7–C. An area rate hearing is currently progressing with respect to sales in the Permian Basin area, which includes Texas Railroad District No. 7–C, and Slade is already a party to the Section 5(a) aspects of this proceeding. Accordingly, Slade's future rates for these sales will be determined in this proceeding. There would seem to be little purpose to providing for further hearings on the Section 4 aspects of these sales when the area hearing is in its final stages. We note, moreover, that Slade's own accounting witness stated his opinion that cost of service of a producer as small as Slade should not be used to determine what is a just and reasonable price for the gas. We shall therefore consolidate these dockets with the Permian Basin proceeding.

With respect to Slade's remaining rate schedule involved here, covering the Sinton Dome plant sales, there is also sound justification for providing that any rate determination with respect thereto be made in an area rate proceeding. The whole purpose of the plant is to provide compression service both for its own produced gas and gas purchased by Slade from other producers in the area. Slade is thus interested solely in shallow low pressure production in need of compression. The shallow zones in the Sinton Dome area are generally thin, lenticular, and extremely faulted. It is, therefore, impossible to predict the economic life of the plant because of inherent difficulties in calculating proven reserves of the type necessary for Slade's operations.[5] We think it clear, under such circumstances, that no meaningful determination of a just and reasonable price for the gas sold from the compressor plant can be made on a cost of service basis since neither the test year used nor any other test period can be expected to be typical.[6] Instead, we are convinced that the determination of the just and reasonable price must await an area hearing covering Railroad District No. 4, where the Sinton Dome plant (and the wells producing gas processed at the plant) are located.

The Commission orders:

For the reasons heretofore stated, the proceedings in Docket Nos. RI60–147 and RI60–179 are hereby consolidated with the Permian Basin area rate proceeding in Docket No. AR61–1, and the proceedings in Docket Nos. G–19986 and RI61–10 will be consolidated with an appropriate area rate proceeding.

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[4] These consolidated proceedings were set down for hearing prior to the *Phillips* decision in Opinion No. 338, 24 FPC 537, and hearings were held shortly after the issuance of that decision.

[5] Thus, although the plant operated at approximately 77 percent of capacity in the test period, Slade's witness testified at the hearing in 1960 that the plant was then operating at 46 percent of capacity and that based upon his projections for the entire year 1960 the plant would be operated at only 35 percent of capacity.

[6] We note in passing that the examiner in accordance with our discussion in *Phillips* included in the cost of gas processed at the Sinton Dome plant the full price payable to other producers during the test period based on Slade's proposed resale rate of 17.24347¢ per Mcf pursuant to the percentage purchase contracts they had with Slade despite the lack of any showing of such producers' costs. Whatever the validity of such a determination in the case of *Phillips*, or any other determination made on a cost of service basis we think it clear that with a small processor like Slade where a very high percent of its total costs are payments to producers calculated on such a percentage of sale basis, it makes little, if any, sense to fix the price of the sales from the plant on such a "cost" basis, and that the area price concept provides the only rational basis for fixing a just and reasonable price for such sales.

DECISION

UPON A CONSOLIDATED PROCEEDING UNDER SECTION 4(e) OF THE NATURAL GAS ACT TO DETERMINE JUST AND REASONABLE RATES FOR AN INDEPENDENT PRODUCER

(Issued November 1, 1961)

ZWERDLING, *Presiding Examiner:* This consolidated proceeding involves a review under Sec. 4(e) of the Natural Gas Act concerning the lawfulness of four rate increases relating to the sale of gas by Slade, Inc. (Slade), as follows:

1) Docket No. G–19986 involves suspension on October 30, 1959, of Supp. No. 4 to Slade's FPC Gas Rate Schedule No. 5, representing an increase from 12.12268¢ to 15.0952¢ per Mcf for gas sold by Slade from its Sinton Dome compressor plant in San Patricio County, Texas, to Tennessee Gas Transmission Company (Tennessee). The increased rates went into effect, subject to refund, as of August 3, 1960.

2) Docket No. RI61–10 involves suspension on July 28, 1960, of Supp. No. 5 to Slade's FPC Gas Rate Schedule No. 5, representing an increase to 17.2437¢ per Mcf for the same sale.

3) Docket No. RI60–147 involves suspension on February 18, 1960, of Supp. No. 5 to Slade's FPC Gas Rate Schedule No. 4, representing an increase from 11¢ to 17¢ per Mcf for a wellhead sale of gas by Slade from the Spraberry Trend area, Glasscock and Reagan Counties, Texas.

4) Docket No. RI60–179 involves suspension on March 9, 1960, of Supp. No. 4 to Slade's FPC Gas Rate Schedule No. 6, representing an increase from 10¢ to 17.2294¢ per Mcf for another wellhead sale from the Spraberry Trend area, Reagan County, Texas.

With respect to the last three dockets listed above, Slade did not file a motion to put its proposed increased rates into effect, and it is still collecting the rates which were in effect prior to the instant rate increase filings.

By order dated September 6, 1960, the Commission consolidated the proceedings, and set the matter for hearing on October 11, 1960. The hearing commenced on that date and was concluded on October 26, 1960.

Slade is a small producer, whose oil and gas operations consist of: (1) performance of geological and engineering services; (2) exploration for, and production and sale of oil and natural gas; and (3) operation of gathering lines and a compressor plant in the Sinton Dome area, San Patricio County, Texas. Slade's entire production operations involve joint venture properties in connection with which it acts both as operator, on behalf of the joint venturers, and in addition as a joint venturer to the extent of a working interest representing something less than 10 percent.

In 1958, the test year used in this proceeding, Slade's working interest production was 21,000 barrels of liquids, and 244,000 Mcf of natural gas, of which 114,000 Mcf were sold at the wellhead and 130,000 Mcf were gathered into the Sinton Dome plant. 1,728,000 Mcf of natural gas were compressed and sold from the Sinton Dome plant in 1958, of which 1,231,537 Mcf were delivered to Tennessee under the contract involved in the instant Docket Nos. G–19986 and RI 61–10. The total volumes sold by the plant were supplied by the 130,000 Mcf of Slade's own production, plus 1,598,000 Mcf of gas purchased from other producers.

The instant proceedings involve most of the volumes now sold by Slade in interstate commerce for resale.

During the instant hearing, Slade presented a company-wide cost of service for the test year 1958 (Exh. 1), deriving separate costs for (1) its oil and gas operations (production), and (2) the compressor plant. In order to eliminate

controversy, it limited its rate of return to 9%, and limited its federal income tax allowance to actual tax liability. Slade found a total cost of service in the amount of $141,808 for oil and gas operations, and $389,361 for compressor plant operations. This produced, under its preferred and recommended method, a unit cost of 38.3578¢ per Mcf for Slade's own produced gas (relating to Docket Nos. RI60–147 and RI60–179), and 18.9662¢ per Mcf for gas compressed and sold (relating to Docket Nos. G–19986 and RI61–10). In calculating cost for the gas compressed and sold, the 130,000 Mcf of gas brought into the plant from Slade's own production was charged to the plant at Slade's own determined unit cost for its wellhead production.

Neither the Staff nor the intervenor, Public Service Electric and Gas Company, presented any evidence of their own in the instant proceeding. However, in Appendix A to its brief the Staff set forth a cost of service, using Slade's figures but applying different methods. Staff thus derived a unit cost of 19.0717¢ per Mcf for Slade's wellhead gas production and 13.6943¢ per Mcf for plant gas compressed and sold. In spite of the fact that it thus derived a higher unit cost for Slade's wellhead gas production than the rates herein proposed, Staff nevertheless recommends that all of the increased rates proposed in this proceeding should be disallowed—for reasons which will be noted at a later point.

At the conclusion of the hearing the Staff and Slade entered into a stipulation on the record (3: 225–228), setting forth their areas of disagreement with respect to Slade's cost of service. The effect of this stipulation was to limit the controverted cost of service questions to a small number of issues, which will be discussed below.

In addition to its cost of service presentation, Slade also relies upon certain other contentions. It particularly stresses that the operations of its Sinton Dome compressor plant depend upon its ability to purchase gas from field producers in the area; that such purchases are made under "percentage of proceeds" contracts, under which the price paid by Slade to the producer is based upon a percentage of Slade's resale price to Tennessee; that unless its proposed rate of 17.24347¢ per Mcf for such compressor plant sales under Docket No. RI61–10 is approved herein, it will not be able to acquire and develop acreage in the area or to satisfy its requirements for gas for the compressor plant by purchases from field producers.

It is concluded, however, that such arguments are not of controlling significance in this case, and that the case should be disposed of on the basis of Slade's jurisdictional cost of service, as here determined. The controverted cost of service issues, as set forth in the stipulation between the Staff and Slade, will now be considered.

Provision for Unrecoverable Joint Venture Costs

As noted above, all of Slade's production operations involve joint venture properties, in connection with which it acts both as operator, on behalf of the joint ventures, and in addition as a joint venturer to the extent of a working interest representing something less than 10 percent.

Slade includes as a cost in its cost-of-service (Exhibit 1, Schedule B) an item of $10,858 as a provision for "doubtful recoverables (unrecoverable joint venture costs)." The Staff excludes $10,000 of this item as not constituting a proper cost to be charged to the rate payer. This latter amount represents the unrecoverable portion of the total expenditures incurred by Slade in its activity as operator and actual developer of the producing properties, for an in behalf of the joint venturers. As operator, Slade thus expended funds which should have

been totally reimbursed by the respective joint venturers. Since reimbursement to this extent was not made, and on the theory that these partial defaults are unrecoverable, Slade contends that this amount is properly included in its cost of service. It alleges that such costs are a normal incident of ordinary and necessary expenditures for any company taking the lead in exploratory and developmental activity, and that without such operators and assumption of such risks on their part, there could be no joint ventures in exploration and development. For these reasons Slade contends that this item is a normal, necessary incident to its gas producing operations.

The Staff, on the other hand, contends that this is not a proper cost of service item; that Slade should instead attempt to collect this amount from the delinquent members of the joint venture and not from the rate payers.

It is concluded that the Staff's position with respect to this item is sound, and that $10,000 of the $10,858 item for "unrecoverable joint venture costs" should be excluded from Slade's cost-of-service. In the instant Section 4(e) proceeding just and reasonable rates are being fixed only for the gas produced by Slade which represents its own working interest in the joint venture. The expenditures made by Slade as operator, on behalf of the other joint venturers, cannot be regarded as having any relationship to the cost of the gas which Slade itself is selling. Accordingly, such amounts cannot properly be collected from the rate payer in the instant proceeding, and an appropriate adjustment has been made on Appendix Table A to this decision.

Allocation of General and Administrative Costs

For the year 1958, Slade shows General and Administrative expenses totalling $141,694, less an amount of $60,300 indicated as "Charges to joint operations" or a net of $81,394 for the General and Administrative expense account. Sched. B of Exh. 1 further shows the allocation by Slade of the $81,394 as follows:

$11,070 to Geological and Engineering Services:
$10,858 to Oil and Gas Operations—representing the provision for "unrecoverable joint venture costs," discussed above;
$59,466 to Compressor Plant.

The issue here is whether Slade properly assigned the entire $59,466 item to Compressor Plant, or whether that amount should be allocated between the two functions of (a) compressor plant, and (b) oil and gas operations. Staff takes the position that the $59,466 represents indirect costs in the General and Administrative account which were not directly assignable to either of these two functions; that such costs accordingly must be allocated between both functions, and it made this allocation on the basis of the direct expenses (excluding purchased gas) recorded as applicable to oil and gas operations and compressor plant. This resulted in an allocation of $25,884 of this item to oil and gas operations, and $33,506 to compressor plant.

Slade, on the other hand, points out that it has directly assigned to the respective working interest owners the $60,300 General and Administrative Expense item, which represents General and Administrative Expenses incurred in operation of the jointly owned properties—the latter constituting the entire "oil and gas operations." Slade also notes that out of this $60,300 item it has charged to its own "oil and gas operations" that portion chargeable to its own working interest ownership, amounting to $10,070.[1] It contends that

[1] See Exh. 1, Sched. B—"Production expenses (including $10,070 Company's share of joint venture general and administrative)."

no other portion of General and Administrative Expenses is related to the "oil and gas operations;" that its own assignment is consistent with the incurrence of liabilities for operator's general and administrative costs under existing agreements between the owners and the operator of producing properties. This position appears to be borne out by the testimony of Slade witness Field, as follows:

> The general and administrative category includes a credit of $60,300 representing charges to joint ventures for administrative costs of Slade, the operator, in accordance with the operating agreements. The major part of the $60,300 charge to joint ventures for general and administrative costs is absorbed by other working interests. Slade's working interest portion of this $60,300 is included in production expenses within the category "Oil and Gas Operations," as indicated parenthetically therein. In 1958 Slade's portion of its general and administrative costs was $10,070. (1: 21–22)

Under the circumstances, it is concluded that the Staff's allocation of a portion of the $59,466 item to oil and gas operations represents a "double charge" to that function, and is not supported by the instant record. The Staff position must accordingly be rejected.

Computation of Federal Income Taxes

Slade derived a total federal income tax component for its cost of service in the net amount of $4,600, comprised of a credit of $6,200 for oil and gas operations and $10,800 as a debit to the compressor plant. Staff, on the other hand, found a total tax liability of $15,812, which was allocated to oil and gas operations in the amount of $8,276 and to compressor plant in the amount of $7,536.

The Staff thus found a greater amount of net tax liability for the entire company by $11,212, this increase being due primarily to the use of a lesser amount of tax deductions than reflected by Slade. In determining the company's excess of tax allowable depletion over book depletion, Staff calculated the depletion deductions on the basis of the company's actual 1958 price levels, as reflected in its 1958 tax return. Slade, on the other hand, calculated the depletion deductions on the basis of its claimed cost of service and revenue requirements for the test year 1958.

In computing the income tax allowance in rate proceedings in general, it is customary to determine tax liability not upon the basis of actual taxable income collected in the test year, but rather on the basis of the tax liability which would result from the return allowance approved in the determined cost of service. Similar considerations require that calculation of the depletion deductions in the instant case should be based not upon Slade's actual 1958 price levels, but rather upon the jurisdictional cost of service approved in the instant proceeding.

Although Staff, as noted above, arrived at a greater company-wide net tax liability than that computed by Slade, the Staff derived a lower tax allowance for the compressor plant sales than that determined under the Slade approach. This disparity represents the chief issue in connection with the federal income tax computation. It results from the fact that the Staff's calculation of tax liability was determined by use of the tax formula for the company *as a whole*. The total tax thus derived was then allocated to the separate functions or departments of (a) oil and gas operations, and (b) compressor plant, on the basis of the relative amounts of return derived from the rate base determined for each separate function.

Slade, on the other hand, computed the tax liability separately for each of the two functions, for the reason that the statutory depletion allowance and the intangible drilling cost allowance arise solely out of the oil and gas operations, and are not related to the compressor plant operations. Accordingly, in making the separate tax computation for the compressor plant operation Slade reflected no tax deductions whatsoever for statutory depletion or intangible drilling costs. The Staff attacks this method on the ground that Slade files a tax return and pays its taxes as a corporate entity, rather than by separate departments. Staff contends that if there are special benefits which accrue to oil and gas producing property, they should not be reflected in the tax calculation in a manner which will create a negative tax liability for the oil and gas operations; that the special benefits apply to the company as a whole and should be distributed in an equitable manner to the two departments.

In resolving this problem, it is noted that no contention is made here that the Slade approach has the effect of granting to the company as a whole a higher total tax allowance than its actual total company liability. The question is merely as to how the allowances should be divided up between the two functions or departments.

It is further noted that both Slade and the Staff in this proceeding have computed a separate and distinct cost of service for each of the two functions of oil and gas operations, and compressor plant—assigning to each function its own cost. Under the circumstances, it would seem appropriate that the federal income tax allowance for each function should be derived in the same manner, on the basis of each function's separate taxable income and the tax deductions applicable to each—thus eliminating from the tax deductions for the compressor plant the statutory tax allowances which arise only out of the oil and gas operations.

It is relevant to note, in this connection, that although the Staff determined an over-all company liability for federal income taxes, it then allocated this total amount between the two functions on the basis of the relative dollars of return derived from each function's own rate base. If it is appropriate to make such an allocation on the basis of each function's contribution to the overall return, it is difficult to see why the determination of the tax allowance for each function should not be made in the first instance on the basis of each function's separate contribution to the tax deductions.

Accordingly, it is concluded that federal income tax liability should be computed separately for each of the two functions of oil and gas operations, and compressor plant, following the Slade approach. Since, as indicated above, the depletion deduction applicable to the oil and gas operations is here being calculated on the basis of the cost of service herein approved for that function, this being a lower figure than the cost of service claimed by Slade, a recomputation of the income tax component related to the oil and gas operations becomes necessary. This recomputation is set forth in Appendix Table A to this decision.

Allocation of Joint Exploration and Production Costs Between Gas and Oil

Slade takes the position that both exploration costs and joint production costs should be allocated between gas and oil under the straight Btu method, for reasons which have already been exhaustively considered by the Commission in the *Phillips* case (Op. No. 338), 24 FPC 537.

With respect to the allocation of exploration costs, this problem was resolved by the Commission in the *Phillips* decision, with its rejection of the straight Btu method and its adoption of the modified Btu method, using an economic adjustment factor of four. Nothing has been shown in the record of the instant

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case which justifies a departure here from that Commission position, and it is accordingly concluded that exploration costs should be allocated under the *Phillips* modified Btu method, with the adjustment factor of four.

With respect to joint production costs, the instant record does not contain the required data for application of the relative cost allocation method approved by the Commission in *Phillips*. Slade contends that, as a small company with production only from a few isolated locations, its operations were such as not to provide an adequate basis for the useful application of the relative cost method. Accordingly, it allocated joint production costs under the straight Btu method. The Staff, on the other hand, because of the unavailability of the relative cost method, allocated joint production costs under the sales realization method, allocating 27% of such joint costs to gas.

It is concluded here that the holding by the Commission in *Phillips* rejecting both the sales realization method and the straight Btu method as a basis for allocating exploration costs, and the reasons cited by the Commission in support of that position, are equally controlling with respect to the problem of allocating joint production costs. It is further concluded that although the relative cost method should be used where possible for the allocation of joint production costs, since that method is not available in the instant proceeding the *Phillips* modified Btu method with an adjustment factor of four presents the more acceptable alternative—for the same reasons which led the Commission to approve that method in *Phillips* for the allocation of exploration costs.

The allocation of the modified "total cost of oil and gas production" under the *Phillips* modified Btu method is shown on Appendix Table B herein. The ultimate result, as there shown, is to produce a final jurisdictional unit cost of 17.7443¢ per Mcf applicable to Slade's wellhead sales of gas produced and sold, based on the 1958 test year.

Purchased Gas Cost Adjustment

In computing its cost of purchased gas for the compressor plant, Slade included a purchased gas cost adjustment of $48,850, on the theory that such additional amounts were payable to its producer-suppliers as a result of its proposed Sec. 4(e) rate increase for gas compressed and sold from its compressor plant. Under the terms of Slade's gas purchase contracts with its suppliers (Exh. 5, par. 9), the required payments were based upon varying percentages of the proceeds from Slade's resale at the tailgate of the Sinton Dome plant, depending upon the pressures at which the suppliers' gas was delivered to the plant.

In computing the purchased gas cost adjustment, Slade used the average settlement ratio for the test year 1958, based upon the average ratio for that year of gas purchase cost to resale price—amounting to 55.8%. It applied this 1958 average ratio of 55.8% to the 1958 volumes of sale from the compressor plant, priced at its proposed Sec. 4(e) rate of 17.24347¢ per Mcf for such sales.

It seems clear that Slade must be allowed a purchased gas cost adjustment in the instant proceeding, on the basis of the position taken by the Commission in the *Phillips* case with respect to similar percentage-type gas purchase contracts. The Commission there held (Op. 338, 24 FPC 537; 552) that the increase which it was approving in Phillips' rates would automatically result in an increase in the purchase price payable by Phillips to its suppliers under such contracts, and that Phillips' purchased gas cost must therefore be adjusted accordingly.

The only real issue here is as to the manner in which Slade's purchased gas cost adjustment should be computed. Staff contends that the settlement ratio employed in this computation should be lower than that used by Slade; that it

in fact should be in the order of only 30%, on the basis of certain testimony by Slade witness Gautreaux. Par. 9 of the gas purchase contracts (Exh. 5) provides for a settlement ratio of 60% of the Slade resale price where the incoming pressure of the gas coming into the Sinton plant is from 300 lbs. to 850 lbs., requiring only one compression stage. Where the pressure is from 150 to 300 lbs., requiring two compression stages, the settlement ratio is 40%; and for pressure of 150 lbs. and under, requiring three compression stages, the settlement ratio is 25%. Slade witness Gautreaux, during cross-examination by Staff at a hearing session in October, 1960, stated that the company has gas entering the Sinton plant at each of these three stages of compression (2:128). When asked to state the maximum pressure at which the plant *presently*, received gas from any of its suppliers, he replied:

> Well, the best pressures we are getting are third stage gas presently, 300 or just slightly over 300.
>
> * * * * * * *
>
> Q. Does the great bulk of your gas go through two stages of compression?
>
> A. Presently the great bulk of our gas goes through three stages of compression, sir. (2:132)

The Staff's position that the settlement ratio used in the purchased gas cost adjustment should be in the order of 30% is based upon the fact that the gas purchase contracts provide for a settlement ratio of only 25% where the incoming gas is at pressures of 150 lbs. and under, requiring three compression stages.

Unfortunately, the testimony quoted above leaves it unclear as to whether the low pressures testified to by Gautreaux at this point represented merely a temporary situation prevailing at the time of his testimony in October, 1960, or whether they were instead characteristic of the purchased gas currently being received and to be received in the future by the Sinton plant as a regular matter—thus representing a settled departure from the situation which prevailed during the test year 1958. In this unsatisfactory state of the record it is concluded that the purchased gas cost adjustment should here be computed on the basis of the average settlement ratio which prevailed during the 1958 test year—55.8%.

It is further concluded that in computing this adjustment the settlement ratio of 55.8% should be applied to whatever rate may herein be approved for gas compressed and sold from the Sinton plant.

Even after the modifications made in Slade's claimed cost-of-service, as outlined above, there results a unit cost of gas compressed and sold which is somewhat higher than Slade's requested contract price of 17.24347¢ per Mcf for such sales. Under these circumstances it is concluded that Slade's purchased gas cost adjustment in the amount of $48,850, based upon its proposed rate of 17.24347¢ (Exh. 1, Sched. B–1) is adequately supported and should be approved. The ultimate result, as shown on Appendix Table B herein, is to produce a jurisdictional unit cost applicable to gas compressed and sold at Slade's Sinton Dome plant in the amount of 17.4154¢ per Mcf.

Staff's Other Factors To Be Considered

At pages 18–19 of its brief Staff contends, in a summary fashion, that the 1958 revenues shown by Slade on its Exh. 1, Sched. B, for gas compressed and sold, were understated by $7,343; and that the 1958 revenues shown for gas compressed for others and returned to them (being non-jurisdictional revenues) were understated by $9,458.

No such questions with relation to a claimed understatement of revenues were included in the "areas of disagreement" which were the subject of the stipula-

tion entered upon the record by the Staff and Slade at the close of the instant hearing. In addition, the discussion of these revenue figures is handled in an obscure and unsatisfactory fashion in the briefs filed by the parties. For these reasons, and because of the relatively minor nature of the problem and its impact (dollar-wise), it is concluded that the revenue question does not warrant serious consideration here.

Questions Raised With Respect to Possible Impact of the Commission's Statement of General Policy No. 61–1

At the conclusion of the hearing the Presiding Examiner raised certain questions relating to the possible bearing of the Commission's Statement of General Policy No. 61–1, [24 FPC 818], and the area price levels fixed therein, upon the determination of jurisdictional rates in the instant proceeding. These questions were raised because all of the increased rates proposed by Slade in the instant Sec. 4(e) proceeding are in excess of the area price levels for increased rates, as set forth in the Statement of General Policy for the areas here involved.

Upon further consideration, it is concluded that the Statement of General Policy does not affect the issues to be decided in this proceeding. It is noted, in this connection, that the Commission on page 819 of the Statement declared that the area price levels therein set forth were merely "for the purpose of guidance and initial action by the Commission and their use will not deprive any party of substantive rights or fix the ultimate justness and reasonableness of any rate level." It is further noted that the Commission has not since that time taken any action to suspend pending individual producer rate hearings, to await determination of their jurisdictional rates in area rate proceedings. Under the circumstances, it is concluded that the Commission contemplates that individual producer Sec. 4 rate hearings which are tried and decided prior to the completion of an applicable area rate proceeding will be resolved on the basis of the individual producer's cost of service, and without reference to the Statement of General Policy or the area price levels set forth therein.

Staff Contention That Slade's Proposed Rate Increases Should Be Rejected Without Regard to Its Determined Cost of Service

At the conclusion of the Staff brief (pp. 20–23) a contention is made that Slade is "an inefficient and high cost producer;" and it is suggested that it is not in the public interest "to encourage the development of such unpredictable and marginal producing properties." The implication is that the rate increases herein proposed should be rejected out of hand, without reference to the jurisdictional cost of service here determined for Slade.

The record evidence, however, does not support a finding that Slade is an "inefficient" producer, or that the development of the producing properties involved in this proceeding is contrary to the public interest.

In addition, in the instant individual producer rate proceeding, unlike the situation which might develop in an area rate proceeding, there is no evidence from which a determination could be made as to average or comparative costs for all producers in the Slade area, producing and selling gas of similar quality and under similar conditions. Under the circumstances, it is concluded that the question whether Slade's proposed rates in the instant proceeding are "just and reasonable" must be resolved by reference to its own cost of service as herein determined.

As already noted it is here concluded, based on the resolution of the controverted issues as outlined above, that Slade's jurisdictional unit cost of service applicable to wellhead sales of gas produced and sold, based on the 1958 test year, is 17.7443¢ per Mcf; and that its jurisdictional cost of service applicable to gas compressed and sold at its Sinton Dome plant is 17,4154¢ per Mcf.

Under the circumstances, Slade's proposed rate increases in the instant Docket Nos. G–19986, RI61–10, RI60–147, and RI60–179 are found just and reasonable, and the Sec. 4(e) proceedings in such dockets should accordingly be terminated.

Findings and Conclusions

Upon full consideration of the entire record in this proceeding, the evidence adduced and the briefs filed, the Presiding Examiner finds and concludes in addition to the findings and conclusions above set out, that:

(1) Slade, Inc. is a natural-gas company subject to the provisions of the Natural Gas Act.

(2) The sales of natural gas for resale which are the subject of this order are sales of natural gas in interstate commerce and are subject to the jurisdiction of this Commission.

(3) The jurisdictional unit cost of service determined for Slade's wellhead sales of gas produced and sold, based on the 1958 test year, is 17.7443¢ per Mcf. The jurisdictional unit cost of service determined for gas compressed and sold at Slade's Sinton Dome plant is 17.4154¢ per Mcf.

(4) Such costs were in excess of Slade's proposed increased rates in the instant consolidated dockets.

(5) It is necessary and appropriate under the circumstances, and good cause exists, that the proceedings in the instant consolidated dockets should be terminated; and that Slade's obligation to refund excess charges with respect to any of such proceedings should be discharged.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission on appeal, or upon its own motion as provided in the Commission's Rules of Practice and Procedure, that:

(A) The proceedings in Docket Nos. G–19986, RI61–10, RI60–147, and RI60–179 are hereby terminated, and Slade's obligation to refund excess charges with respect to any of such proceedings is hereby discharged.

JOSEPH ZWERDLING,
Presiding Examiner.

APPENDIX

TABLE A.—*Oil and gas operations, year 1958*

Line No.	(1) Description	(2) Reference	(3) Amount
1	Oil and gas operating expenses	Exhibit 1, schedule B	$106,808
2	Less: Unrecoverable joint venture costs	do	10,000
3	Operating expenses—adjusted		96,808
4	Return at 9 percent	Exhibit 1, schedule B	40,500
5	Federal income tax allowance	See notes 1–5	(5,282)
6	Regulatory expense—estimated	Exhibit 1, schedule B	700
7	Oil and gas production costs		132,726

NOTE 1: Computation of tax allowance.

Return at 9 percent		$40,500
Deduct:		
Tax depletion in excess of book (see notes 2–5)	$28,927	
IDC in excess of book amortization	10,000	
Interest charged to income	13,700	
Total—Per exhibit 1, schedule C, as adjusted		52,827
Return after deductions		(12,327)
Tax at 30 percent corporate rate (42.85 percent—exhibit 1, schedule C) (See note 4)		(5,282)

NOTE 2: Computation of tax depletion in excess of book (computed as on exhibit 1, schedule C).

Percentage depletion—$132,726×23 percent (See notes 3–5)	$30,527
Depletion based on cost	1,600
Tax depletion in excess of book depletion	28,927

NOTE 3: Percentage depletion is computed at 23 percent of cost of service (exhibit 1, schedule C).

Oil and gas operating expenses, adjusted	96,808
Return at 9 percent—Per exhibit 1, schedule B	40,500
Regulatory expense—Per exhibit 1, schedule B	700
Cost of service before tax	138,008

Thus: Percentage depletion=0.23 ($138,008+tax) expressed as $31,742+0.23 T.

NOTE 4: Tax is computed at corporate *normal* tax rate of 30 percent. Return represents net profit *after* the tax allowance. Consequently, the rate applied to return after tax deductions is 30 percent divided by 70 percent or 42.85 percent (exhibit 1, schedule C). Return minus tax deductions times 42.85 percent reflects the allowance in cost of service.

Thus: Tax=0.4285 ($40,500—tax deductions).

NOTE 5: Tax deductions consist of (exhibit 1, schedule C):

I.D.C. in excess of book amortization	$10,200
Interest expense	13,700
Depletion based on cost	(1,600)
Tax deductions before percentage depletion	22,300

Thus: T=0.4285 [$40,500−[$22,300+($31,742+0.23T)]]
T=0.4285 ($40,500−$54,042−0.23T)
T=−$5,803−0.098555T
T=−$5,282

APPENDIX

TABLE B.—*Oil and gas production, year 1958*

Line No.	(1)	(2) Reference	(3) Barrels and Mcf	(4) Factor	(5) Mcf	(6) Percent	(7) Costs	(8) Barrels or Mcf	
	Conversion of barrels to equivalent Mcf at modified Btu 24 to 1 ratio and allocation of costs								
1									
2	Liquids	Exhibit 1, schedule A.	21,000	24	504,000	67.3797	$89,430	4.258571	Per barrel.
3	Gas	Exhibit 1, schedule A.	244,000	1	244,000	32.6203	43,296	.177443	Per Mcf.
4	Total				748,000	100.0000	132,726		

Compressor plant operations

5	Compressor plant operating costs (1)	Reference (2)	Amount (3)	Per Mcf (4)	Remarks (5)
6	Company produced gas—130,000 Mcf @ 17.7443¢.	Exhibit 1, schedule A.	$23,068		Unit cost reduced from 38.3578¢.
7	Purchased from outsiders—1,598,000 Mcf @ 9.6219¢.	Exhibit 1, schedule A.	153,788		55.8% × 17.24347¢ (schedule B-1).
8	Other operating costs—52 percent × $183,673.	Exhibit 1, schedule B.	95,510		48 percent returned to leases.
9	Return at 9 percent—52 percent × $37,800.	Exhibit 1, schedule B.	19,656		
10	Federal income tax allowance—52 percent × $10,800.	Exhibit 1, schedule B.	5,616		
11	Regulatory expense—estimated.	Exhibit 1, schedule B.	3,300		
12	Total—applicable to 1,728,000 Mcf.		300,938	17.4154¢	

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SOUTHERN CALIFORNIA EDISON COMPANY, DOCKET NO. CP61–172; TENNESSEE CALIFORNIA GAS TRANSMISSION COMPANY, DOCKET NO. CP61–173; CALIFORNIA GAS TRANSMISSION COMPANY, DOCKET NO. CP61–174; TENNESSEE CALIFORNIA GAS TRANSMISSION COMPANY, DOCKET NO. CP61–212

ORDER PERMITTING WITHDRAWAL OF APPLICATIONS AND TERMINATING PROCEEDINGS

(Issued January 3, 1963)

On November 23, 1962, the applicants filed a "Joint Notice of Withdrawal of Applications" pursuant to Section 1.11(d) of the Commission's Rules of Practice and Procedure alleging that the project covered by the applications was undergoing revisions of a substantial and far-reaching nature. Good cause exists for permitting the withdrawal and for terminating the proceedings in these dockets.

The Commission finds:

It is necessary and proper in carrying out the provisions of the Natural Gas Act to permit the withdrawal of the applications and to terminate the proceedings in Docket Nos. CP61–172, CP61–173, CP61–174, and CP61–212.

The Commission orders:

(A) The withdrawal of the applications in Docket Nos. CP61–172, CP61–173, CP61–174, and CP61–212 is hereby permitted.

(B) The proceeding in Docket Nos. CP61–172, CP61–173, CP61–174, and CP61–212 are terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

COLORADO-WYOMING GAS COMPANY, DOCKET NO. CP63–25

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued January 4, 1963)

On July 26, 1962, Colorado-Wyoming Gas Company (Applicant) filed in Docket No. CP63–25 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval of the Commission to abandon its 520-horsepower Wellington Compressor Station in Larimer County, Colorado, all as more fully set forth in the application.

The subject facilities were installed in 1926 to supply natural gas to the City of Cheyenne, Wyoming, and areas adjacent thereto. With the commencement of operation of Applicant's Mesa-Cheyenne main line in 1948 and delivery of natural gas from Colorado Interstate Gas Company at two purchase points on said line in 1957, the Wellington Compressor Station was no longer required for delivery of gas to the City of Cheyenne or areas adjacent thereto, or for any other gas deliveries. Actual compressor operation has not been required since 1954, and Applicant can forsee no further requirement for the facilities.

The original cost of the subject facilities was $80,704, and the depreciated cost is $22,193. The cost of abandonment is estimated at $1,460, and salvage value at $526.

Pursuant to due notice, a public hearing was held in Washington, D.C., on December 12, 1962, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Colorado-Wyoming Gas Company, a Delaware corporation having its principal place of business in Denver, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of June 5, 1945, in Docket No. G–285 (4 FPC 938).

(2) The facilities proposed to be abandoned as hereinbefore described, all as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission, and the abandonment of said facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonment by Applicant as hereinbefore described is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

(4) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant, Colorado-Wyoming Gas Company, of the facilities hereinbefore described, all as more fully described in the application in this proceeding, be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of the subject abandonment with 10 days of the date thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP63-68

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 4, 1963)

On September 17, 1962, El Paso Natural Gas Company (Applicant) filed in Docket No. CP63-68 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1963 and the operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application on file with the Commission.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally co-extensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $5,000,000 and no single project will exceed a cost of $500,000. Applicant states that no additional financing will be required to pay the construction costs.

Pursuant to due notice, a public hearing was held in Washington, D.C., on December 11, 1962, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G-288 (4 FPC 486).

(2) The facilities hereinbefore described as more fully described in the application in this proceeding, are proposed to be used in the transportation of nat-

ural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities to take natural gas purchased from producers thereof as proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization hereinafter granted, a statement under oath showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization hereinafter granted, (d) location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $5,000,000 with no single project to exceed a cost of $500,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct during the calendar year 1963, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Applicant.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement under oath showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73

psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $5,000,000 with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

R. E. SMITH; R. E. SMITH, ET AL.

ORDER ACCEPTING OFFER OF SETTLEMENT

(Issued January 4, 1963)

On December 7, 1962, R. E. Smith (Smith) tendered for filing a notice of change in its FPC Gas Rate Schedule No. 2, proposing a price of 14.6¢ per Mcf for Smith's jurisdictional sale of gas to Texas Eastern Transmission Corporation (Texas Eastern) from the Carthage Field, Panola County, Texas (Railroad Commission District No. 6). Also, on that same date, R. E. Smith, *et al.* (Smith) tendered for filing a notice of change in its FPC Gas Rate Schedule No. 5, proposing a price of 13.8733¢ per Mcf for Smith's jurisdictional sale of gas to Texas Eastern from the Dallas Husky Field, Goliad County, Texas (Railroad Commission District No. 2).

Concurrent with the tender for filing of the proposed rate increases, Smith submitted an Offer of Settlement, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure.

In its Offer of Settlement, Smith proposes to delete from the contract compromising its FPC Gas Rate Schedule No. 2, (1) the present periodic price escalations, (2) the favored-nations clause; (3) the price redetermination provision, and provide instead for five-year periodic increases of 1.0¢ per Mcf. Smith also proposes to delete from the contract compromising its FPC Gas Rate Schedule No. 5, (1) the present periodic price escalation, and (2) the favored-nations clause, and provide instead for five-year periodic increases of 0.5¢ per Mcf.

Texas Eastern has joined in the Offer of Settlement and approves the proposed contractual amendments.[1] No objection to the proposed settlement has been received from any interested party.

Since the proposed rates of 14.6¢ per Mcf, including applicable tax reimbursement under Gas Rate Schedule No. 2 and 13.8733¢ per Mcf, including applicable tax reimbursement under Gas Rate Schedule No. 5 are acceptable under the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1 (18 CFR, Chapter I, Part 2, Section 2.56) issued December 20, 1960 for jurisdictional sales of natural gas in Texas Railroad Commis-

[1] Smith has filed, concurrently with its Offer of Settlement, an executed amendment to its gas purchase contract with Texas Eastern compromising Rate Schedule No. 5, implementing the provisions of the Offer of Settlement with respect to that contract. The amendment is accepted as a supplement to the contract, as hereinafter provided.

sion District Nos. 2 and 6, respectively, it appears that the public interest will best be served by accepting Smith's proposed settlement.

There have been no suspended rates under either rate schedule, and consequently there are no refunds involved herein.

We desire to make it clear that acceptance of this Offer of Settlement shall not be construed as approval of any future increased rates proposed by Smith under the periodic escalation provisions or otherwise.

The Commission finds:

The proposed settlement on the basis described herein, as more fully set forth in the Offer of Settlement filed by Smith on December 7, 1962, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved by the Commission and made effective as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by Smith with the Commission on December 7, 1962, is hereby approved in accordance with the provisions of this order.

(B) Smith shall file, within 30 days from the date of issuance of this order, a contractual amendment to its FPC Gas Rate Schedule No. 2, which Smith shall execute with Texas Eastern in conformity with Smith's Offer of Settlement. The contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Upon notification by the Secretary that Smith had complied with the terms and conditions of this order, the proposed rate and charge of 14.6¢ per Mcf under Smith's Gas Rate Schedule No. 2 shall be effective as of January 7, 1963, the first day after expiration of the required statutory notice.

(D) The executed amendment to Smith's gas purchase contract with Texas Eastern, on file with the Commission as Smith's FPC Gas Rate Schedule No. 5, implementing the provisions of the Offer of Settlement herein and the proposed rate and charge of 13.8733¢ per Mcf are hereby accepted for filing as Supplement No. 2 to Smith's FPC Gas Rate Schedule No. 5, effective as of January 7, 1963, the first day after expiration of the required statutory notice.

(E) The acceptance of this Offer of Settlement is without prejudice to any findings or determinations that may be made in any proceedings which are presently being heard, or in any proceedings now pending, or hereinafter instituted by or against Smith.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

TEXACO INC., DOCKET NO. CI63-468

ORDER DENYING APPLICATION FOR REHEARING AND RECONSIDERATION

(Issued January 4, 1963)

On December 5, 1962, Texaco Inc. (Texaco), pursuant to Section 19(a) of the Natural Gas Act (Act) and Section 1.34 of the Commission's Rules of Practice and Procedure filed an application for rehearing of the Commission's order of November 6, 1962, which rejected the proposed rate schedule and related certificate application submitted by Texaco in the above-styled proceeding.

The Commission's order of November 6, 1962, in rejecting Texaco's proposed rate schedule and related certificate application stated that, "the gas purchase agreement contains pricing provisions other than those permitted by Section 154.93 of the Commission's regulations".

Texaco premises its request for rehearing and reconsideration on numerous grounds; however, it is generally the contention of Texaco that the Commission was not authorized under the Act and existing law to promulgate such regulations and further that the action by the Commission in summarily rejecting this rate schedule was illegal.

The rate schedule submitted by Texaco and rejected by the Commission in the above-styled proceedings provided for three alternate methods for establishing prices during specified four year intervals succeeding the initial five years following the commencement of deliveries. During the initial five year period the price of gas was fixed at 21.5 cents per Mcf. Thereafter the price level would change and would be subject to further change, once in four year periods, in one of the following ways:

1. By a two cents escalation at the conclusion of the first five years after the commencement of deliveries and a two cent escalation for each of the three succeeding four year periods until the price escalated to 29.5 cents per Mcf (Art. 7, Sec. 1 proposed rate schedule).

2. At the beginning of each of the four year periods commencing with the conclusion of the first five years after the initiation of deliveries of gas, Texaco's proposed rate schedule makes provisions for price redeterminations equivalent to the average of the three highest field prices being paid or payable within a prescribed purchase area. This average of the three highest prices upon which these redeterminations can be predicated specifically includes (a) prices in effect under bond and subject to refund under orders of the Federal Power Commission; (b) prices payable but not being paid because the producer's rate schedule covering the payment thereof has not been filed with said Commission; (c) price payable but not being paid because the producer's rate schedule covering the payment thereof has not yet become effective or (d) price payable but not being paid on account of suspension thereof under order of said Commission pursuant to Section 4(e) of the Natural Gas Act[1] (Art. 7, Sec. 2, proposed rate schedule).

3. If at the beginning of any of the above-mentioned four-year periods the buyer under Texaco's proposed rate schedule purchases gas for interstate pipeline transmission and resale, *at a delivery point in any field in the prescribed purchase area* from which such gas is produced, at a price higher than the price payable under categories 1 or 2, then the price to be paid by the buyer to Texaco during such period shall be adjusted so as to be the fair equivalent of buyer's higher price (Art. 7, Sec. 3 of Texaco's proposed rate schedule).

Hence, it is apparent that after deliveries have been initiated for a period of five years that the proposed rate schedule provides for a myraid of methods for fixing a price for succeeding four year periods under the rate schedule. Texaco thus reserves unto itself the opportunity of three alternate methods for establishing a new price during each of the successive four year periods depicted in its rate schedule. Through this complex of multiple price determinants provided for in its proposed rate schedule, Texaco has established a rigid network of pricing provisions that can alternately be invoked in order to assure that it receives the highest anticipated jurisdictional prices payable for gas in the prescribed purchase area. Under Texaco's proposed rate schedule, neither its buyer nor the public are apprised of what method it will choose during successive four year periods to establish the price payable under its contract. If

[1] For the purpose of this redetermination, Art. 7, Sec. 2 of Texaco's proposed rate schedule provides that certain adjustments are to be made in the event that the three highest average contracts utilized in the redetermination contain provisions that vary significantly from corresponding provision in Texaco's proposed rate schedule with respect to such items as point of delivery, delivery pressures, etc.

Texaco found itself in the position of enjoying the highest price within the purchase area, it could forego the invocation of the redetermination provisions under its rate schedule and rely upon the 2 cent escalation provisions to further increase the price payable under its contract. Texaco's rate schedule thus contemplates a contractual price which is either the highest price in the purchase area or equivalent to the highest. The level of the price to be determined under the provisions of the rate schedule is not predicated upon any basis geared to assure that such a price is just and reasonable or even required by the public convenience and necessity.

Section 16 of the Act authorizes the Commission to issue rules and regulations of general applicability found necessary or appropriate to carry out the provisions of the Act. It is manifest that Texaco's alternate pricing provisions in addition to being offensively burdensome to the effective administration of the Act run directly counter to the purpose envisaged by Congress of maintaining the "lowest reasonable rate".[3] The Commission has repeatedly contended that Sections 4, 5 and 7 of the Act contemplate that it will refuse to sanction contract provisions that are adverse to the public interest.[3]

In the *Pure Oil* case[4] the Commission had occasion to examine the effect that indefinite escalation clauses in producer contracts would have both upon the public interest and regulatory objectives of the Act. It held in the *Pure Oil* case that indefinite escalation clauses were, *per se*, contrary to the public interest on numerous grounds.

In Order No. 232A issued on March 31, 1961, 25 FPC 609, the Commission reaffirmed its findings in the *Pure Oil* case. However, it also recognized the validity of its earlier findings that the use of long term contracts for the sale of natural gas by producers to pipelines is desirable, appropriate and clearly in the public interest.

In Order No. 232A the Commission reached the conclusion that the elimination of all indefinite escalation provisions from long term contracts could prove to be too restrictive in that such provisions could serve to add a degree of pricing flexibility that might be warranted due to changing and intervening circumstances that might arise over the long span of years envisaged by such contracts. However, the Commission was quite specific in its Orders Nos. 232A and 242[5] that only those rate schedules containing limited price—redetermination provisions as prescribed in Section 154.93 of its regulations would be accepted for filing. These limitations upon price redetermination provisions in producer rate schedules were incorporated into the Regulations by the Commission in order to afford some flexibility in the pricing provisions in long term contracts that would not prove offensive to the public interest.

Texaco's proposed rate schedule contains price redetermination provisions that are not in conformity with Section 154.93 of the Commission's Regulations. The following are some of the reasons why Texaco's rate schedule contravenes Section 154.93 of the Regulations:

(1) Texaco's pricing provisions provide that a redetermination can be made at four year intervals; the Regulations require that redeterminations be limited to once every five years.

(2) The Regulations provide that the price redetermination be based upon producer rates which are not in issue in suspension or certificate proceedings;

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[2] See § 5a of the Act.

[3] See Order 242 issued on February 8, 1962, 27 FPC 339, and Commission's order in *Atlantic Refining Co.*, Docket No. CI62–1562 issued on September 13, 1962, 28 FPC 469.

[4] *The Pure Oil Company*, 25 FPC 383.

[5] Order No. 242 was issued on February 8, 1962, at Docket No. R–203, 27 FPC 339.

Texaco's pricing provisions specifically provide for redeterminations that are based on producer rates that have been suspended and upon producer rates that have not been duly certificated by the Commission.

(3) The Regulations provide that a redetermination can be made once in five-year contract periods during which there is no provision for a change in price to a specific amount, Texaco's rate schedule provides for a change in price to a specific amount in the same interval of time in which it also provides for a redetermination.

(4) The Regulations require that the redetermination be based upon and not higher than a producer rate or producers rates which are subject to the jurisdiction of the Commission; Texaco's rate schedule is not restricted to redeterminations that are based solely upon *producer* rates.

The Commission promulgated Orders Nos. 232A and 242 after public notice of proposed rulemaking was given by publication in the Federal Register. In response to such notice, numerous comments were submitted and these were given due consideration by the Commission prior to the issuance of these orders.

The Commission finds:

That the public convenience and necessity requires that the application for rehearing and reconsideration filed by Texaco Inc. in the above-styled proceedings be denied in all respects.

The Commission orders:

That the application for rehearing and reconsideration filed by Texaco Inc. in the above-styled proceeding be and hereby is denied in all respects.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP63-18

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 4, 1963)

On July 16, 1962, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP63-18 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 209 feet of pipeline and appurtenances located within the bounds of Applicant's existing Cow Island Junction in Vermilion Parish, Louisiana, all as more fully set forth in the application.

The subject facilities will be used for the purpose of making natural gas fuel[1] available to the Cow Island Extraction Plant of Goliad Corporation and Union Oil Company of California from Applicant's transmission purchase laterals converging within Cow Island Junction.

The estimated cost of the subject facilities is $39,472, for which Applicant will be reimbursed by the extraction plant operators.

Pursuant to due notice, a public hearing was held in Washington, D.C., on December 11, 1962, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing

[1] The gas stream containing the fuel also contains gas from which a portion of the ethane and heavier hydrocarbons may be extracted by the plant operators before return to Applicant's system.

that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G–1143 (7 FPC 145).

(2) The facilities hereinbefore described, all as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transcontinental Gas Pipe Line Corporation, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 2111

ORDER APPROVING PROJECT EXHIBITS AND PRESCRIBING ANNUAL CHARGES

(Issued January 7, 1963)

On March 30, 1961, Pacific Power & Light Company, licensee for major Project No. 2111, filed for Commission approval revised Exhibit F and revised and new Exhibits K and L drawings.

Commission approval of Exhibit F is not required. Since revised Exhibit L, Sheets 8 through 14 (FPC Nos. 2111–42 through –48) and new Exhibit L,

Sheets 15 through 17 (FPC Nos. 2111–49 through –51) show only geologic information, their approval by the Commission is not required.

The revised Exhibit K drawings show for the first time the amount of lands of the United States occupied by the project as being 359.23 acres. Revised Exhibit L, Sheet 2 (FPC No. 2111–41) shows the constructed slope of the spillway chute and the elevations of the toe of the spillway training walls.

The Commission finds:

(1) The following described exhibits conform to the Commission's rules and regulations and should be approved as part of the license for the project, and Exhibit L–2 (FPC No. 2111–27), now part of the license and which has been superseded, should be eliminated from the license:

	FPC Nos.	Entitled
Exhibit K sheets No. 1 through 9	2111–32 through –40	Project Area and Project Boundary.
Revised exhibit L sheet 2	FPC No. 2111–41	Sections Swift No. 1.

(2) The amount of annual charges to be paid under the license for the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands within the Gifford Pinchot National Forest by the project is reasonable as hereinafter fixed and specified.

The Commission orders:

(A) The exhibits described in the above finding as conforming to the Commission's rules and regulations are hereby approved as part of the license for the project, and the exhibit described in the same finding as being superseded is hereby eliminated from the license for the project.

(B) Article 37 of the license is hereby modified by revising subparagraph (ii) thereunder to read as follows:

> (ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, exclusive of those used for transmission line right-of-way, $862.15, effective as of May 1, 1956, the effective date of the license; and

and by adding thereto the following subparagraph (iii):

> (iii) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands used for transmission line right-of-way only, an amount hereafter to be determined by the Commission.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PAN AMERICAN PETROLEUM CORPORATION

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued January 7, 1963)

Pan American Petroleum Corporation (Pan American) on December 6, 1962, filed a motion for reconsideration of the telegram issued by the Secretary on

November 1, 1962, and confirmed by letter on November 5, 1962, which rejected notices of changes in rates tendered by Pan American to its FPC Gas Rate Schedule Nos. 49 and 111, respectively.[1] The filings were rejected because the notices of changes in rates were in error in that thy reflected the contract prices but not the contract pressure base corresponding to such prices. The rejection was without prejudice to the submittal of proper filings, and in accordance therewith, Pan American on December 6, 1962, resubmitted the rate increase filings together with letters changing the pressure base from 16.4 psia to 14.65 psia under the contracts comprising Pan American's subject rate schedules.

In its motion for reconsideration Pan American requests that the rejected notices of change be reinstated and accepted for filing effective 30 days from the original date of filing, or, in the alternative, that the 30 day notice period be waived with respect to the resubmitted filings. In support thereof, Pan American states that on November 2, 1962, the letter agreements were filed which affirmed the change of pressure base under the subject contracts. Pan American thus states that because of such filings Pan American fully complied with the Secretary's telegram of November 1, 1962, and letter of November 5, 1962, two days prior to the expiration of the thirty-day period following the date of original filings.

The Secretary's action in rejecting Pan American's original filings was perfectly proper under the facts as they existed at that time in light of the deficiencies in Pan American's filings. The mere fact that Pan American subsequently rectified these deficiencies does not in our view warrant any modification of the Secretary's action. Furthermore, good cause has not been shown for waiving the 30 day notice requirement provided under Section 4(d) of the Act with respect to the resubmitted filings.

The Commission orders:

For the reasons set forth above, Pan American's motion for reconsideration filed on December 6, 1962 is hereby denied.

[1] The rejected notices of change were tendered on October 5, 1962.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. RP61-18

ORDER GRANTING MOTION IN PART AND AUTHORIZING MAKING OF REFUND

(Issued January 7, 1963)

United Gas Pipe Line Company (United) on November 20, 1962, filed a motion for an order authorizing and directing the distribution of refunds in the above-styled proceeding in the principal amount of $4,837,232.

By order issued March 12, 1962, in the consolidated proceedings in Docket No. G-9547, *et al.*, 27 FPC 504, the Commission approved an agreement which provided for final settlement of six dockets[1] and for determination of the cost of service for the period beginning June 15, 1961, during which the Docket No. RP61-18 rates would be in effect upon the basis of a post-audit of United's books and records. Pursuant to that agreement, United served its cost of service studies on the parties to the proceeding and conferences thereon were held on November 14 and 15, 1962. No agreement of the parties on any reserved issue

[1] The dockets fully settled were G-9547, G-10592, G-12801, G-15360, G-18406, and RP60-2.

was reached during that conference. United in its motion states that as a result a hearing will be necessary in this docket, and that such hearing may have to await conclusion of the hearing in its Docket No. RP63–1.

United urges that it is ready, able and willing to make the refunds indicated by its post-audit cost of service studies, that its customers desire those refunds to be made, and that making of such refunds would be in the public interest and would relieve it of the burden of paying interest on the amounts refunded. In the alternative, should the Commission refuse to grant the motion, United asks that it be permitted to entrust the sums to the Commission in escrow or invest them in United States Government securities with any interest thereon payable to beneficiaries of the entrusted amounts.

Answers to United's motion have been filed by Southern Natural Gas Company, Texas Eastern Transmission Corporation, Willmut Oil & Gas Company, Mississippi Valley Gas Company and Laclede Gas Company. All parties other than Laclede indicate willingness to accept the refunds as proposed by United in its Appendix B report. All parties other than Texas Eastern indicate, however, that if the amounts are not refunded forthwith, the amount in question, or any part thereof, should be subject to interest as set forth in the Settlement Agreement.

Laclede Gas Company (Laclede), which expressly reserved the right to contest the demand component reflected in the design of United's PL–C rates applicable to pipeline customers in United's Central Zone when it acceded to the Agreement, opposes United's proposal for immediate refund of the full amounts as computed by United and submitted in its report under Appendix B of the Settlement Agreement. Laclede stands upon its express reservation of its claimed right to a determination of the design of United's PL–C rates for the period beginning June 15, 1961. It is Laclede's position that all refunds may properly be made to Jackson Zone customers but that refunds should be made only in part to Central Zone pipeline customers; that is refunds to the latter should be based upon a demand charge of 75¢[2] or $1.43,[3] whichever results in the lesser amount of refund. It further urges that the difference between the total of these lesser amounts and the overall amount proposed to be refunded by United in the Central Zone should be retained by United together with 7% interest thereon until such time as the issue of rate design is resolved by the Commission. Laclede estimates a figure of approximately $200,000 as representative of the difference[4] between the refunds proposed by it and United, respectively.

Texas Eastern in its answer contends that the adoption of Laclede's proposal will defer refund of about $200,000 to Texas Eastern out of a total of approximately $2,200,000 it would receive under United's proposed distribution. It also alleges that whatever refunds might ultimately be withheld from Texas Eastern under Laclede's proposed rate design would accrue to the benefit of Southern Natural and Texas Gas Transmission Company, neither of which companies has raised the rate design issue or sought further refunds.

We have considered United's motion and the answers thereto filed by each of the parties in the light of the aforementioned Settlement Agreement and our order issued March 12, 1962, with respect thereto. It is our view that the protection of the rights expressly reserved by Laclede in this proceeding require that the amounts determined under Laclede's plan of refund for the Central Zone pipeline customers should be retained for subsequent refund by United, with interest, until such time as the reserved rate design issue has been determined.

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[2] As advocated by Laclede.
[3] As advocated by all other parties.
[4] These figures have not been verified by staff examination.

Deferral of refund of an amount approximating the difference indicated in Laclede's answer, and the interest thereon, does not place any undue burden on United or its customers.

The Commission finds:

United should be authorized to make refunds to its Jackson and Central Zone customers as hereinafter provided and any difference between the total of such refunds and the amount proposed to be refunded by United in its motion filed November 20, 1962, should be retained by United, with interest thereon, until determination of the rate design question reserved in this proceeding.

The Commission orders:

(A) United shall make refunds to its Northwest Mississippi and Jackson Zone customers of the portion of the $4,837,232 applicable to the customers in those zones in accordance with the provisions of the Settlement Agreement and as proposed in its motion filed November 20, 1962.

(B) With respect to the portion of the $4,837,232 of refunds applicable to the Central Zone United shall compute a distribution to its pipeline customers in that Zone based upon a demand charge of either 75¢ or $1.43, whichever produces the lesser amount of refund with regard to each pipeline customer, and shall make refunds to Central Zone pipeline customers in accordance with the distribution thus computed. Refunds to Central Zone City gate and transportation customers shall be made in accordance with the provisions of the Settlement Agreement and as computed by United and in accordance with Appendix B referred to in the Motion filed November 20, 1962.

(C) The portion of $4,837,232 remaining with United under the computations prescribed in paragraph (B) shall be retained by United for refund together with interest thereon computed at 7% per annum, subject to determination of the issues reserved in this proceeding.

(D) Within 15 days from the date of making the refunds ordered hereinabove, United shall report to the Commission, in writing and under oath, the amount of refund made to each of its customers, showing separately the amount of principal and interest so paid, and the bases upon which such refunds were computed, and shall serve a copy of such report upon each of the customers receiving a refund.

(E) Any motions, agreements, and interim refunds approved herein are without prejudice to the expressly reserved rights or contentions of the parties to the proceeding in Docket No. RP61–18.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

JAMES W. WITHERSPOON, DOCKET NO. RI63–196

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued January 7, 1963)

On November 30, 1962, James W. Witherspoon (Witherspoon), filed a motion for reconsideration of the Commission's order issued November 21, 1962,[1] in the

[1] Issued under lead docket, Humble Oil & Refining Company (Operator), *et al.*, Docket No. RI63–194.

above-designated proceeding, providing for hearing on and suspension of the proposed change in rate designated as Supplement No. 1 to James W. Witherspoon FPC Gas Rate Schedule No. 1.

In support of its motion, Witherspoon states that the subject rate increase is justified in accordance with terms of its contract with the buyer, El Paso Natural Gas Company, there is only one well involved from which is derived an average of only $100.00 per month, and there is so little involved that he could not afford the expense necessary to attend a hearing; therefore, the Commission should modify its order of November 21, 1962, by permitting Witherspoon to charge and collect the proposed rate without such rate being subject to suspension.

The increased rate proposed by Witherspoon exceeds the applicable area price level set forth in the Commission's Statement of General Policy No. 61–1, as amended [18 CFR, Chapter 1, Part 2, Section 2.56], and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful. It would therefore not be appropriate to modify the Commission's order of November 21, 1962, even though the amount of annual increase is relatively small. In addition, the justness and reasonableness of the proposed rate will be determined in an area rate proceeding in which industry and area cost data of producers will be utilized, thus obviating the necessity of Witherspoon making an appearance at the hearing.

The Commission finds:

The motion for reconsideration filed by Witherspoon on November 30, 1962, in the proceeding in Docket No. RI63–196, sets forth no new facts or legal considerations which were not fully considered prior to the issuance of our order of November 21, 1962, or which now having been considered warrant the modification of the said order.

The Commission orders:

The motion for reconsideration of the Commission's order of November 21, 1962, filed by James W. Witherspoon on November 30, 1962, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

ALABAMA POWER COMPANY, PROJECT NO. 2146

ORDER APPROVING REVISED PROJECT EXHIBITS

(Issued January 8, 1963)

On January 19, 1962, Alabama Power Company, licensee for major Project No. 2146, filed for Commission approval revised Exhibits L and M showing proposed changes and modifications to the Lock 3 development of Coosa River Project No. 2146, located on the Coosa River in Alabama and Georgia.

As shown on the revised exhibits, the principal changes proposed are: (1) change the spillway gates from 10–40 feet wide by 32 feet high to 6–40 feet wide by 26 feet high (with spillway sill increased in elevation from 473 to 480 feet); (2) increase the top elevation of the earthern dikes and concrete structures from 523 feet to 539 feet; (3) move the axis of Lock 3 dam upstream about 2,700 feet to a more favorable foundation site; and (4) change the type of powerhouse from an indoor type to a semioutdoor type design to provide a saving in initial cost and future building maintenance.

The spillway and earthern dike changes were occasioned by the results of continuing studies made by the licensee. An economic study by the licensee of various dike heights and spillway size combinations indicated that optimum economy was realized in the revised design plans shown on the afore-mentioned revised project exhibits. The results of the proposed changes have been reviewed by our staff and were found to be reasonable, and also that the new site will provide a better foundation and require substantially less foundation treatment with resultant additional economy.

The Secretary of the Army and the Chief of Engineers have advised that: the plans of the structures affecting navigation are satisfactory and existing provisions in the license are adequate to protect the interests of navigation; and the plans and structures affecting flood control are considered satisfactory.

The Commission finds:

(1) The following described revised exhibits conform to the Commission's Rules and Regulations and should be approved as part of the license for the project to the extent herein indicated:

Exhibit L, revised	FPC No.	Title, General Design Drawings, Coosa River Development, Lock 3 Dam
Sheet No. 7	2146-173	Plan and Typical Sections.
Sheet No. 7A	2146-174	Powerhouse Transverse Section.
Sheet No. 7B	2146-175	Powerhouse Transverse Section.
Sheet No. 7C	2146-176	Powerhouse Longitudinal Section.
Sheet No. 7D	2146-177	Powerhouse Floor Plans.
Sheet No. 7E	2146-178	Powerhouse Floor Plans.
Sheet No. 7F	2146-179	Powerhouse Floor Plans.

Exhibit M (Revised) General Description of mechanical, electrical and transmission equipment, filed in the Commission on January 19, 1962, insofar as it pertains to the Lock 3 Development.

(2) Exhibit L, Sheet No. 7 (FPC No. 2146-96) and Exhibit M, insofar as it relates to the Lock 3 development, now parts of the license and which have been superseded to the extent herein indicated, should be eliminated from the license.

The Commission orders:

(A) The revised exhibits described in finding (1) above are hereby approved as part of the license for Project No. 2146.

(B) The Exhibit L drawing described in finding (2) above is hereby eliminated from the license for the project, and the Exhibit M referred to in the same finding is hereby eliminated from the license for the project, insofar as it relates to the Lock 3 development.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP62-121

FINDINGS AND ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 8, 1963)

On October 1, 1962 Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP62-121 an application to further amend the order in said

docket heretofore issued by the Commission on May 18, 1962, 27 FPC 997, by authorizing the construction and operation of tap and metering facilities and the sale and delivery of an additional daily contract quantity of 14,000 Mcf of natural gas to Iowa-Illinois Gas and Electric Company (Iowa-Illinois) for resale, all as more fully set forth in the application to amend.

The proposed facilities for the establishment of an additional delivery point for sales to Iowa-Illinois will be in Henry County, Illinois, and are estimated to cost $29,100, to be financed from funds on hand. Iowa-Illinois has entered into a contract to supply Nitrin Corporation's plant near Cordova, Illinois, with 14,000 Mcf of natural gas per day on a firm basis for use in the manufacture of fertilizer products.

On November 5, 1962, Applicant filed in the subject docket an application to amend the order of May 18, 1962, in said docket by authorizing the sale and delivery of an additional daily contract quantity of 100 Mcf of natural gas to the City of Sullivan, Illinois, for resale, and an additional daily contract quantity of 407 Mcf of natural gas to Associated Natural Gas Company for resale in Jackson, Missouri, all as more fully set forth in the application to amend.

Both the City of Sullivan and Associated Natural Gas Company have advised Applicant that the additional gas is necessary to meet 1962–63 winter demands. The additional quantities will be delivered through existing connection and metering facilities.

Notice of the subject applications to amend was issued on December 4, 1962, and published in the Federal Register on December 11, 1962 (27 F.R. 12231). No protest, request for hearing, or petition to intervene has been received.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and required by the public convenience and necessity that the Commission's order of May 18, 1962, in Docket No. CP62–121, should be further amended to authorize the construction and operation of tap and metering facilities and the sale and delivery of an additional daily contract quantity of 14,000 Mcf of natural gas to Iowa-Illinois Gas and Electric Company for resale, and to authorize the sale and delivery of an additional daily contract quantity of 100 Mcf of natural gas to the City of Sullivan, Illinois, for resale, and an additional daily contract quantity of 407 Mcf of natural gas to Associated Natural Gas Company for resale in Jackson, Missouri.

The Commission orders:

(A) The Commission's order of May 18, 1962, in Docket No. CP62–121, be and the same is hereby further amended to authorize the construction and operation of tap and metering facilities and the sale and delivery of an additional daily contract quantity of 14,000 Mcf of natural gas to Iowa-Illinois Gas and Electric Company for resale, and to authorize the sale and delivery of an additional daily contract quantity of 100 Mcf of natural gas to the City of Sullivan, Illinois, for resale, and an additional daily contract quantity of 407 Mcf of natural gas to Associated Natural Gas Company for resale in Jackson, Missouri.

(B) In all other respects, said order of May 18, 1962, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

LICENSE APPLICATIONS—REVISION OF REGULATIONS, DOCKET NO. R-223

ORDER NO. 260

AMENDING SUBCHAPTERS B AND D OF REGULATIONS UNDER THE FEDERAL POWER ACT

(Issued January 8, 1963)*

The Commission has under consideration in this proceeding the amendment of its regulations under the Federal Power Act with respect to license applications and approved forms for same.

The purposes of the proposed amendments were to provide for an increase in the numbers of copies of license applications to meet the minimum requirements of the Commission; to require the filing of a recreation plan as part of applications for licenses to assist in expediting the processing of such applications; and to revise applications for license for minor projects to conform with Public Law 87-647, approved September 7, 1962 (76 Stat. 447, 16 U.S.C. 803(b), 803(e), 803(i)), which authorizes the Commission to issue minor licenses for existing and proposed projects having an installed capacity of not more than 2,000 horsepower.

General public notice of the proposed rulemaking was given by publication in the Federal Register on October 19, 1962 (27 F.R. 10262). In response to the notice, written comments and views were received from several interested licensees under the Federal Power Act and Federal agencies. Most of the comments expressed concern over the proposed amendment to Section 4.41 of Part 4 of the Commission's Regulations under the Federal Power Act (Title 18, CFR), which would require the filing of a new Exhibit R as a part of each application for license, the same being a plan for the recreational use of project lands and waters. The concern was that preparation of such an exhibit, in the manner proposed, would be difficult, if not impossible, without causing excessive and unreasonable delay in the filing of such applications, and that the cost of such recreational facilities might have an adverse effect on the economics of a proposed hydroelectric project unless such costs were related to the economics of the project. Request was made that an extension of time to February 1, 1963, be granted for the submission of written comments and views respecting the proposed amendment of said Section 4.41. The requested extension of time having been granted (27 F.R. 12378) the proposed amendments hereinafter adopted do not include any proposed amendment of said Section 4.41. No objections were raised to the rules as hereinafter amended.

Upon consideration of the entire record in this proceeding, *the Commission finds:*

The amendments hereinafter adopted are necessary and appropriate in order to carry out the provisions of the Federal Power Act.

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*Published in the Federal Register on January 11, 1963 (28 F.R. 314).

Acting pursuant to the authority granted by the Federal Power Act, particularly Sections 9, 10(a), 10(i), and 309 thereof (16 U.S.C. 802, 803, 825h), *the Commission orders:*

(A) Parts 4, 5, 16 and 24 of Subchapter B, Regulations under the Federal Power Act, Chapter I of Title 18, Code of Federal Regulations, are hereby amended to prescribe therein (in lieu of existing sections or the indicated portions thereof) amended sections 4.40, 4.50, 4.60, 4.70, 4.80, 4.82, 4.84, 5.1, 16.1, and 24.1 to read as set forth in the attachment* hereto which is made a part hereof by reference.

(B) In Part 131 of Subchapter D, Approved Forms, Federal Power Act, Chapter I of Title 18, Code of Federal Regulations, § 131.6 is hereby amended to read as set forth in the afore-mentioned attachment hereto.

(C) The amendments prescribed herein are effective on and after January 1, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 935

ORDER APPROVING REVISED PROJECT EXHIBIT

(Issued January 8, 1963)

On November 3, 1959, Pacific Power & Light Company, licensee for major Project No. 935, filed for Commission approval revised Exhibit K, Sheet 8 (FPC No. 935–79), showing the proposed elimination from the project of certain lands presently occupied by constructed works of the licensee's Project No. 2071. Application to include the lands under the license for Project No. 2071 was also filed on November 3, 1959.

Commission approval of the above-mentioned revised Exhibit K will not affect the amount of annual land charges now provided for in the license for Project No. 935 since such charges are determined in accordance with Regulation 14 of the Commission's old rules and regulations, i.e., on a ratio basis of United States lands to the total project lands involved.

The Commission finds:

The above-described revised Exhibit K conforms to the Commission's rules and regulations and should be approved as part of the license for Project No. 935 and Exhibit K, Sheet 8 (FPC No. 935–55) now part of the license and which has been superseded, should be eliminated from the license for the project.

The Commission orders:

The revised Exhibit K mentioned in the above finding is hereby approved as part of the license for Project No. 935, and the Exhibit K described in the same finding as being superseded is hereby eliminated from the license for the project.

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*Omitted in printing.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 2071

ORDER APPROVING REVISED PROJECT EXHIBIT

(Issued January 8, 1963)

On November 3, 1959, Pacific Power & Light Company, licensee for major Project No. 2071, filed for Commission approval revised Exhibit K drawings and a revised Exhibit F for the project.

Revised Exhibit K shows existing conditions at the project, such as: the project land area by parcels rather than by fractions of sections; complete ownership of land status; and the removal from the project of temporary substations. The above-mentioned Exhibit F requires no approval by the Commission.

Commission approval of the revised Exhibit K drawings will show the location of 2.75 acres of lands of the United States as correctly being within the project boundary of Project No. 2071 rather than as overlapping the project boundary of the licensee's Project No. 935. However, Commission approval of the revised exhibit will not alter the amount of annual charges due the United States for the use of such lands since the annual charges specified in the license for Project No. 2071 include a charge for the 2.75 acres.

The Commission finds:

The following described revised Exhibit K drawings conform to the Commission's rules and regulations and should be approved as part of the license for Project No. 2071, and the Exhibit K drawings described herein as being superseded and which are now part of the license for the project, should be eliminated therefrom:

Revised Exhibit K	Entitled	Superseded Exhibit K
Sheet 1 (FPC No. 2071-31)	Yale H. E. Development Project Area and Project Boundary.	FPC No. 2071-22
Sheet 2 (FPC No. 2071-32)	do	FPC No. 2071-23.
Sheet 3 (FPC No. 2071-33)	do	FPC No. 2071-24
Sheet 4 (FPC No. 2071-34)	do	FPC No. 2071-25.
Sheet 5 (FPC No. 2071-35)	do	FPC No. 2071-26.
Sheet 6 (FPC No. 2071-36)	do	FPC No. 2071-27.
Sheet 7 (FPC No. 2071-37)	do	FPC No. 2071-28.
Sheet 8 (FPC No. 2071-38)	do	FPC No. 2071-29.
Sheet 9 (FPC No. 2071-39)	Yale H. E. Development Project Transmission Line.	FPC No. 2071-30.

The Commission orders:

The revised Exhibit K drawings described in the above finding are hereby approved as part of the license for Project No. 2071, and the Exhibit K drawings described in the same finding as being superseded are hereby eliminated from the license for the project.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 2071 (YALE)

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL PROJECT COST; NET CHANGE THEREIN; AND PRESCRIBING ACCOUNTING THEREFOR

(Issued January 8, 1963)

Pacific Power & Light Company, Licensee for Project No. 2071 (Yale),[1] filed its initial cost statement on April 2, 1956, pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming as of July 31, 1954, an actual legitimate original cost of Project No. 2071 in the amount of $36,590,088.25.[2]

The Commission's staff made a field examination of the books and records of Licensee and other data for the purpose of ascertaining the correctness of the claimed cost. In the course of that examination the staff reviewed Licensee's recorded additions in the amount of $156,348.41, to project cost for the period from August 1, 1954 through December 31, 1957, comprising gross additions of $53,786.09, gross retirements of $1,679.50, and debit adjustments of $104,241.82, as shown by Licensee's books of account.

Following that examination the staff, subject to Commission approval, proposed certain adjustments which are concurred in by representatives of the Licensee, involving (1) the reclassification of a number of items within project plant accounts; (2) the adjustment of claimed and recorded initial project cost by elimination of the net amount of $920,117.22 therefrom; (3) the adjustment of net additional cost for the period August 1, 1954, through December 31, 1957, by elimination of the net amount of $21,951.11 therefrom; and (4) the accounting disposition of all amounts involved in the proposed adjustments.

Based on the proposed adjustments the revised initial project cost as of July 31, 1954, would be $35,669,971.03; the revised net increase in project cost for the period from August 1, 1954, through December 31, 1957, would be $134,397.30; and the resulting revised claimed cost of the project as of December 31, 1957, would be $35,804,368.33.

The net amount of $920,117.22 proposed to be eliminated from claimed and recorded project cost as of July 31, 1954, results from: (1) elimination of a claim in the amount of $351,226.05 for estimated loss of generation at Licensee's Project No. 935 (Merwin), which Licensee claims to have incurred when filling the Yale reservoir; (2) elimination of administrative salaries amounting to $6,709.31, charged to project operations; (3) elimination of the cost of non-project land in the amount of $5,159.36; (4) elimination of the cost of preliminary engineering and survey work prior to 1927 which became obsolete and was

[1] The project is located above the Licensee's Merwin Project No. 935, on the Lewis River in Clark and Cowlitz Counties in the State of Washington. It may be described generally as the Yale Project. The license, issued pursuant to Section 4(e) of the Federal Power Act, is for a period of fifty years, effective as of May 1, 1951. Based upon the average in-service date of generating units included in the project, the commencement of commercial operation of the project occurred October 3, 1953.

[2] Article 23 of the license provides for Commission determination of the actual legitimate original cost of the project and of any additions thereto or betterments thereof.

never useful in the construction of the project, in the amount of $29,966.19; (5) elimination of the amount of excess interest claimed during construction in the amount of $524,325.05; (6) elimination of claims for miscellaneous items in the amount of $17,559.36; (7) reduction of a credit for power produced, subsequent to October 3, 1953, the date of commencement of commercial operation of the project, which reduction increases overhead construction costs assignable to the project in the amount of $12,536.60; and (8) inclusion of general equipment transferred to the project and recorded upon Licensee's books of account but erroneously omitted from claimed project costs, in the amount of $2,291.50.

The net amount of $21,951.11 proposed to be eliminated from recorded cost of project changes for the period from August 1, 1954, through December 31, 1957, results from (1) elimination of a claim associated with non-project land in the amount of $21,130.81; and (2) elimination of a claim associated with Washington State sales tax applicable to the Licensee's Project No. 935 (Merwin), in the amount of $820.30.

The accounting disposition of the amounts involved in all of the proposed adjustments totalling $944,359.83 is shown by the following journal entry:

Numbers		Accounts	Debit	Credit
Old	New			
100.1	101	Electric plant in service:		
		Project No. 935	$1,418.03	
		Project No. 2111	597.72	
		Nonproject (Oregon General)	312.50	
110	121	Nonutility property	26,290.17	
142	183	Preliminary survey and investigation charges	597.72	
250.1	108	Accumulated provision for depreciation of electric plant in service—Project No. 2071.	50,465.05	
251.1	111	Accumulated provision for amortization of electric plant in service.	50.49	
271	216	Unappropriated earned surplus	868,893.30	
503	403	Depreciation expense		$4,265.15
100.1	101	Electric plant in service—Project No. 2071		[1] 944,359.93

[1] The debit adjustment to claimed project cost as of July 31, 1954, in the amount of $2,291.50, represents a recorded cost. No book entry is required to adjust for that amount.

After giving effect to the above adjustments, the Commission's staff recommends and Licensee's representatives concur that the Commission determine: (1) the actual legitimate original cost of Project No. 2071 (Yale), as of July 31, 1954, to be $35,669,971.03; (2) the net addition or change in project cost for the period from August 1, 1954, through December 31, 1957, to be $134,397.30, comprising gross additions of $32,774.84, gross retirements of $1,679.50, and debit adjustments of $103,301.96; and (3) the resulting actual legitimate original project cost as of December 31, 1957, to be $35,804,368.33; all classified by project plant accounts as shown in attached Schedule I.

The proposed recommended project costs include certain charges to Licensee for engineering and construction management services by Ebasco Services Incorporated, a part of which may be shown to represent intercompany profits which violate this Commission's rules prohibiting profits to affiliates. Therefore, the staff recommends that the determination of the cost of Project No. 2071 at this time be made subject to possible future adjustment to reflect all necessary changes by reason of any later Commission determination that part

of the charges to Licensee by Ebasco Services Incorporated represent such intercompany profits.

This Commission by letter dated June 1, 1962, requested comments of the Washington Public Service Commission as to the proposed adjustments and resulting project costs. By its letter dated June 14, 1962, the Washington Public Service Commission indicated no objection thereto.

The Commission finds:

(1) Licensee, by its agreement to the proposed adjustments including the accounting dispositions therefor and resulting project costs, and the Washington Public Service Commission, by its letter of June 14, 1962, have obviated the necessity for the notice and opportunity to protest provided in Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments, including the accounting dispositions therefor, as shown by the above journal entry and the attached Schedule II are reasonable and appropriate for the purposes of the Federal Power Act, and therefore should be approved and directed as hereinafter provided.

(3) The actual legitimate original cost of Licensee's Project No. 2071 (Yale), as of July 31, 1954, is $35,669,971.03; the net addition or change in project cost for the period from August 1, 1954, through December 31, 1957, is $134,397.30, comprising gross additions of $32,774.84, gross retirements of $1,679.50, and debit adjustments of $103,301.96; and the resulting actual legitimate original cost of the project as of December 31, 1957, is $35,804,368.33; all classified by project plant accounts as shown in attached Schedule I.

(4) It is necessary and appropriate for purposes of the Federal Power Act, the Commission license for Project No. 2071 and the Commission's Uniform System of Accounts that the Commission reserve for future consideration determination of the matter of revision of Licensee's actual legitimate original cost of Project No. 2071, as herein determined, to reflect such further adjustments therein as may be necessary in the event that the portion of the cost of the project representing charges to Licensee by Ebasco Services Incorporated are determined to represent intercompany profits which violate this Commission's rule prohibiting profits to affiliates.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The adjustments, including the accounting dispositions therefor, as proposed by the staff and agreed to by the Licensee are hereby approved and directed to be made by the Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed project plant accounts for Project No. 2071, showing a total debit balance of $35,669,971.03 as of July 31, 1954; the debit amount of $134,397.30 for the period of August 1, 1954, through December 31, 1957; and a total debit balance of $35,804,368.33 as of December 31, 1957, classified by project plant accounts as set forth in the attached Schedule I.

(D) Licensee shall file with the Commission, within 90 days from the issuance of this order, FPC Form No. 7 and three certified copies of the adjusting journal entries, showing compliance with this order.

(E) The actual legitimate original cost of Project No. 2071 as determined herein is expressly subject to revision as set forth in finding (4) above.

SCHEDULE I.—ACTUAL LEGITIMATE ORIGINAL COST AND NET CHANGES THEREIN

Account		Initial claimed cost as of July 31, 1954				Changes from Aug. 1, 1954, through Dec. 31, 1957			Total Allowed cost as of Dec. 31, 1957
No.	Title	As claimed	Adjustments and reclassifications	Allowed Cost		As recorded	Adjustments and reclassifications	Allowed cost	
				Before distribution	After distribution				
	Intangible plant	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
302	Franchises and consents	$16,648.70	($1,440.00)	$15,208.70	$16,346.47				$16,346.47
	Hydraulic production plant								
320	Land and land rights	1,352,351.72	(375,242.97)	977,108.75	1,050,206.65	$13,799.79	($23,611.55)	($9,811.76)	1,040,394.89
321	Structures and improvements	1,604,566.66	44,843.26	1,649,409.92	2,333,584.87	9,740.01	21,754.11	31,494.12	2,365,078.99
322	Reservoirs, dams and waterways	18,010,492.10	(96,057.85)	17,914,434.25	25,345,338.52	123,970.20	(42,888.93)	81,081.27	25,426,419.79
323	Water wheels, turbines, and generators	3,177,631.94	26,255.98	3,203,887.92	4,532,860.09	3,196.73	14,842.67	18,039.40	4,550,899.49
324	Accessory electric equipment	401,857.61	108,453.92	510,311.53	721,988.67	(20.83)	3,109.31	3,088.48	725,077.15
325	Miscellaneous power plant equipment	376,174.50	12,897.20	389,071.70	550,458.58	241.86	(401.98)	(160.12)	550,298.46
326	Roads, railroads and bridges	139,541.54	(10,406.84)	129,134.70	182,699.75	4,890.62	1,967.15	6,857.77	189,557.52
	Total hydraulic production plant	25,062,616.07	(289,257.30)	24,773,358.77	34,717,137.13	155,818.38	(25,229.22)	130,589.16	34,847,726.29
	Transmission plant								
340	Land and land rights	28,226.21	(9,100.49)	19,125.72	19,272.21	(920.32)		(920.32)	18,351.89
341	Clearing land and rights-of-way	137,406.46		137,406.46	161,383.06	(18,655.15)		(18,655.15)	142,727.91
342	Structures and improvements	13,678.31	(13,678.31)			1.14	(1.14)		
343	Station equipment	427,517.18	(94,775.61)	332,741.57	470,762.72	582.35	1,876.60	2,458.95	473,221.67
344	Towers and fixtures	7,756.05		7,756.05	10,973.26	181.37		181.37	11,154.63
345	Poles and fixtures	140,882.22	(18,200.98)	122,681.24	144,088.38	13,946.42		13,946.42	158,034.80
346	Overhead conductors and devices	104,301.59		104,301.59	122,501.59	6,796.87		6,796.87	129,298.46
	Total transmission plant	859,768.02	(135,755.39)	724,012.63	928,981.22	1,932.68	1,875.46	3,808.14	932,789.36
	General plant								
372	Office furniture and equipment	631.60	(631.60)						
373	Transportation equipment	5,030.76	(5,030.76)			(1,402.65)	1,402.65		
377	Tools and work equipment	17,969.42	(17,969.42)						
378	Communication equipment	5,305.48		5,305.48	7,506.21				7,506.21
	Total general plant	28,937.26	(23,631.78)	5,305.48	7,506.21	(1,402.65)	1,402.65		7,506.21
	Total direct costs	25,967,970.05	(450,084.47)	25,517,885.58					

	Indirect construction costs								
61	Temporary construction facilities	1,930,472.02	(40,258.74)	1,890,213.28					
62	Construction equipment	697,130.16	(57,899.90)	639,230.26					
63	Camp and commissary	425,055.65		425,055.65					
64	Labor expense	112,722.40		112,722.40					
65	Superintendence, timekeepers, clerks, etc	1,473,721.11	(179,207.26)	1,294,513.85					
66	Insurance, injuries and damages	125,488.61	12,943.33	138,431.94					
69	Contractor's Fee	943,112.40		943,112.40					
	Total indirect construction costs	5,707,702.35	(264,422.57)	5,443,279.78					
	Overhead construction costs								
71	Engineering	1,125,651.01	468,368.05	1,594,019.06					
72	Law expenditures	10,455.94		10,455.94					
75	Taxes	273,807.86	(3,685.83)	270,122.03					
76	Administrative and general expense	538,134.75	(158,503.95)	379,630.80					
77	Interest	2,979,344.23	(524,325.05)	2,455,019.18					
80	Earnings and expenses during construction	(12,977.94)	12,536.60	(441.34)					
	Total overhead construction costs	4,914,415.85	(205,610.18)	4,708,805.67					
	Total indirect and overhead costs	10,622,118.20	(470,032.75)	10,152,085.45					
	Total cost of project	36,590,088.25	(920,117.22)	35,669,971.03	35,669,971.03	156,348.41	(21,951.11)	134,397.30	35,804,368.33

SCHEDULE II.—SUMMARY OF ADJUSTMENTS TO CLAIMED AND RECORDED COST AS OF JULY 31, 1954; TO RECORDED CHANGES FROM AUG. 1, 1954 THROUGH DEC. 31, 1957; AND ACCOUNTING DISPOSITION THEREOF

Account		Total	Adjustment of book cost to claimed cost-general equipment recorded but not claimed	Total adjustments	Total	Proposed adjustments to claimed costs as of July 31, 1954				
						No. 1	No. 2	No. 3	No. 4	No. 5
No.	Title					Estimated loss of generation at project No. 935	Administrative salaries	Nonproject land	Preliminary engineering and survey prior to 1927	Interest during construction
	Intangible plant	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
302	Franchises and consents	($1,440.00)		($1,440.00)	($1,440.00)					
	Hydraulic production plant									
320	Land and land rights	(398,854.52)		(398,854.52)	(375,242.97)	($351,226.05)		($5,159.36)		
321	Structures and improvements	66,597.37		66,597.37	44,843.26					
322	Reservoirs, dams and waterways	(138,946.78)		(138,946.78)	(96,057.35)					
323	Water wheels, turbines and generators	41,098.65		41,098.65	26,255.98					
324	Accessory electric equipment	111,563.23		111,563.23	108,453.92					
325	Miscellaneous power plant equipment	12,495.22		12,495.22	12,897.20					
326	Roads, railroads and bridges	(8,439.69)		(8,439.69)	(10,406.84)					
	Total hydraulic production plant	(314,486.52)		(314,486.52)	(289,257.30)	(351,226.05)		(5,159.36)		
	Transmission plant									
340	Land and land rights	(9,100.49)		(9,100.49)	(9,100.49)					
342	Structures and improvements	(13,679.45)		(13,679.45)	(13,678.31)					
343	Station equipment	(92,899.01)		(92,899.01)	(94,775.61)					
345	Poles and fixtures	(18,200.98)		(18,200.98)	(18,200.98)					
	Total transmission plant	(133,879.93)		(133,879.93)	(135,755.39)					
	General plant									
372	Office furniture and equipment	(718.60)	($87.00)	(631.60)	(631.60)					
373	Transportation equipment	(5,207.61)	(1,579.50)	(3,628.11)	(5,030.76)					

377	Tools and work equipment	(17,969.42)		(17,969.42)	(17,969.42)					
378	Communication equipment	(625.00)	(625.00)							
	Total general plant	(24,520.63)	(2,291.50)	(22,229.13)	(23,631.78)					
	Total direct costs	(474,327.08)	(2,291.50)	(472,035.58)	(450,084.47)	(351,226.05)		(5,159.36)		
	Indirect construction costs									
61	Temporary construction facilities	(40,258.74)		(40,258.74)	(40,258.74)					
62	Construction equipment	(57,899.90)		(57,899.90)	(57,899.90)					
65	Superintendence, timekeepers, clerks, etc.	(179,207.26)		(179,207.26)	(179,207.26)					
66	Insurance, injuries and damages	12,943.33		12,943.33	12,943.33					
	Total indirect construction costs	(264,422.57)		(264,422.57)	(264,422.57)					
	Overhead construction costs									
71	Engineering	468,368.05		468,368.05	468,368.05				($29,966.19)	
75	Taxes	(3,685.83)		(3,685.83)	(3,685.83)					
76	Administrative and general expense	(158,503.95)		(158,503.95)	(158,503.95)		($6,709.31)			
77	Interest	(524,325.05)		(524,325.05)	(524,325.05)					($524,325.05)
80	Earnings and expenses during construction	12,536.60		12,536.60	12,536.60					
	Total overhead construction costs	(205,610.18)		(205,610.18)	(205,610.18)		(6,709.31)		(29,966.19)	(524,325.05)
	Total indirect and overhead costs	(470,032.75)		(470,032.75)	(470,032.75)		(6,709.31)		(29,966.19)	(524,325.05)
	Total adjustments	(944,359.83)	(2,291.50)	(942,068.33)	(920,117.22)	(351,226.05)	(6,709.31)	(5,159.36)	(29,966.19)	(524,325.05)
	Accounting disposition									
100.1	Electric plant in service:									
	Project No. 935 (Merwin)	1,418.03		1,418.03	597.73					
	Project No. 2111 (Swift)	597.72		597.72	597.72					
	Nonproject (Oregon General)	312.50	2,291.50	(1,979.00)	(1,979.00)					
110	Other physical property	26,290.17		26,290.17	5,159.36			5,159.36		
142	Preliminary survey and investigation charges	597.72		597.72	597.72					
250.1	Reserve for depreciation of electric plant in service—project No. 2071 (Yale)	50,465.05		50,465.05						
251.1	Reserve for amortization of limited-term investments—electric plant in service	50.49		50.49						
271	Earned surplus	868,893.30		868,893.30	915,143.69	351,226.05	6,709.31		29,966.19	524,325.05
503	Depreciation	(4,265.15)		(4,265.15)						
	Total accounting disposition	944,359.83	2,291.50	942,068.33	920,117.22	351,226.05	6,709.31	5,159.36	29,966.19	524,325.05

( ) Denotes credit.

No.	Title	Total	Proposed adjustments to claimed costs as of July 31, 1954—Continued				Adjustments to changes from Aug. 1, 1954 through Dec. 31, 1957				Disposition only—Estimated accrued depreciation on total adjustments affecting depreciable plant	
			No. 6 Miscellaneous items	No. 7 Eliminates credit for power produced	No. 8 General equipment recorded but not claimed	No. 9 Reclassifications	Total	No. 10 Nonproject land	No. 11 Sales tax applicable to project No. 935	No. 12 Reclassifications	As of Dec. 31, 1960	Period Jan. 1, to Aug. 31, 1961
	Intangible plant	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	
302	Franchises and consents				($1,440.00)							
	Hydraulic production plant											
320	Land and land rights				(18,857.56)	($23,611.55)	($21,130.81)		($2,480.74)			
321	Structures and improvements				44,843.26	21,754.11			21,754.11			
322	Reservoirs, dams, and waterways				(96,057.85)	(42,888.93)		($820.30)	(42,068.63)			
323	Water wheels, turbines and generators				26,255.98	14,842.67			14,842.67			
324	Accessory electric equipment				108,453.92	3,109.31			3,109.31			
325	Miscellaneous power plant equipment				12,897.20	(401.98)			(401.98)			
326	Roads, railroads and bridges				(10,406.84)	1,967.15			1,967.15			
	Total hydraulic production plant				67,128.11	(25,229.22)	(21,130.81)	($820.30)	(3,278.11)			
	Transmission plant											
340	Land and land rights				(9,100.49)							
342	Structures and improvements				(13,678.31)	(1.14)			(1.14)			
343	Station equipment				(94,775.61)	1,876.60			1,876.60			
345	Poles and fixtures				(18,200.98)							
	Total transmission plant				(135,755.39)	1,875.46			1,875.46			
	General plant											
372	Office furniture and equipment				$87.00	(718.60)						
373	Transportation equipment				1,579.50	(6,610.26)	1,402.65		1,402.65			
377	Tools and work equipment					(17,969.42)						
378	Communication equipment				625.00	(625.00)						
	Total general plant				2,291.50	(25,923.28)	1,402.65		1,402.65			
	Total direct costs				2,291.50	(95,990.56)	(21,951.11)	(21,130.81	($820.30)			

	Indirect construction costs										
61	Temporary construction facilities				(40,258.74)						
62	Construction equipment	($312.50)			(57,587.40)						
65	Superintendence, timekeepers, clerks, etc.				(179,207.26)						
66	Insurance, injuries and damages	(850.79)			13,794.12						
	Total indirect construction costs	(1,163.29)			(263,259.28)						
	Overhead construction costs										
71	Engineering	(7,639.29)			505,973.53						
75	Taxes	(3,685.83)									
76	Administrative and general expense	(5,070.95)			(146,723.69)						
77	Interest										
80	Earnings and expenses during construction		$12,536.60								
	Total overhead construction costs	(16,396.07)	12,536.60		359,249.84						
	Total indirect and overhead costs	(17,559.36)	12,536.60		95,990.56						
	Total adjustments	(17,559.36)	12,536.60	2,291.50		(21,951.11)	(21,130.81)	(820.30)			
	Accounting disposition										
100.1	Electric plant in service:										
	Project No. 935 (Merwin)	597.73				820.30		820.30			
	Project No. 2111 (Swift)	597.72									
	Nonproject (Oregon General)	312.50		(2,291.50)							
110	Other physical property					21,130.81	21,130.81				
142	Preliminary survey and investigation charges	597.72									
250.1	Reserve for depreciation of electric plant in service—Project No. 2071 (Yale)									$46,199.90	$4,265.15
251.1	Reserve for amortization of limited-term investments—electric plant in service									50.49	
271	Earned surplus	15,453.69	(12,536.60)							(46,250.39)	
503	Depreciation										(4,265.15)
	Total accounting disposition	17,559.36	(12,536.60)	(2,291.50)		21,951.11	21,130.81	820.30			

( ) Denotes credit.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PUGET SOUND POWER & LIGHT COMPANY, PROJECT NO. 2150

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL COST OF PROJECT (LOWER BAKER RIVER DEVELOPMENT) AND APPLICABLE INITIAL ACCRUED DEPRECIATION AND PRESCRIBING ACCOUNTING THEREFOR

(Issued January 8, 1963)

Puget Sound Power & Light Company, Licensee for Project No. 2150,[1] on May 28, 1957, filed a statement of initial project cost pursuant to Section 4.26 of the Commission's Regulations under the Federal Power Act, claiming, as of the effective date of the Commission's license, May 1, 1956, an actual legitimate original project cost (Lower Baker River development) in the amount of $6,944,496.24, an accrued depreciation applicable to in-service project properties in the amount of $499,513.00 as of that date and a resulting claimed net investment of $6,444,983.24.[2] That statement does not include claimed costs associated with the Upper Baker River development of the project.[3]

The Commission's staff made a field examination of the books and records of Licensee and other data for the purpose of ascertaining the correctness of those amounts. Following that study the staff, subject to Commission approval, proposed certain adjustments and accounting dispositions which were agreed to by Licensee's representatives. That agreement, reached prior to Commission approval of project boundaries of Project No. 2150, contemplates that a further examination of project cost, as herein recommended, will be completed hereafter to reflect any changes therein made necessary by reason of the Commission's approval of project boundaries on June 15 and October 1, 1962, Order Approving Project Exhibits and Prescribing Additional Annual Charges, and Order Modifying Commission Order and Adjusting Annual Charges, *Puget Sound Power & Light Company*, Project No. 2150.

The proposed adjustments so agreed upon reduce Licensee's claimed total cost of the Lower Baker River development as of May 1, 1956, by the net amount of $394,204.75.

The proposed eliminations from claimed cost of the Lower Baker River development consist of the following items:

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[1] The project is located on the Baker River, a tributary of the Skagit River, in Whatcom and Skagit Counties, Washington. It may be described generally as the Baker River Project and consists of two developments, the Upper Baker River development and the Lower Baker River development. The license, issued June 4, 1956 (15 FPC 1496) pursuant to Section 4(e) of the Federal Power Act, as amended by Commission orders issued July 7 and August 23, 1960 (24 FPC 20, 326), authorized the construction, operation and maintenance of the Upper Baker River development, the installation of an additional 57,600 kw generating unit in the Lower Baker River development, and the continued operation and maintenance of the constructed Lower Baker River development. The license is by its terms effective for a period of 50 years, commencing May 1, 1956. By order issued November 4, 1960 (24 FPC 924), the Commission approved, among other things, the transfer of the license from Puget Sound Power & Light Company, a Massachusetts corporation, to Puget Sound Power & Light Company, a Washington corporation, effective November 16, 1960.

[2] Article 38 of the license provides for Commission determination, as of the effective date of the license, May 1, 1956, of the actual legitimate original cost of the parts of the project completed prior to such effective date, and the applicable reserve for depreciation; the difference being the net investment of Licensee in the project as of that date.

[3] Article 39 of the license provides for Commission determination of the actual legitimate original cost of portions of the project completed subsequent to the effective date of the license and of project additions and betterments.

Option on lands, engineering miscellaneous expense applicable to abandoned sites	$8,017.47
Property taxes outside the construction period	2,191.67
Property taxes applicable to non-project plant	649.25
Timber and clearing costs applicable to minor-part Project No. 777	10,110.74
Adjustment of construction power to cost	28,350.75
Adjustment of interest charges during construction	34,266.62
Maintenance and operating expenses improperly capitalized	26,852.67
Elimination of non-project facilities	280,453.85
Intercompany profit in Stone & Webster, Inc., engineering fees	3,311.73
Total	394,204.75

Agreement was also reached between Licensee's representatives and staff for the adjustment of Licensee's claimed accrued depreciation applicable to in-service project properties of the Lower Baker River development as of May 1, 1956, through a net increase of $152,714.00. This amount results from increasing accrued depreciation applicable to hydraulic production plant by $203,838.00 and eliminating accrued depreciation in the amount of $51,124.00 which is associated with transmission plant herein classified as a non-project facility as respects the Lower Baker River development.

In its examination of Licensee's books of account as of May 1, 1956, the staff found that the claimed cost of the Lower Baker River development exceeded the recorded or book cost thereof by $26,019.23. This excess is made up of the following items:

Transmission substation equipment booked as non-project, but included in claim	$28,717.92
Intrasite communication equipment booked as non-project, but included in claim	2,656.21
Credit adjustment of overheads booked, but not included in claim	42.04
Non-project log boom and metering equipment booked, but not included in claim	[1](190.99)
Non-project transmission roads and trails booked, but not included in claim	[1](5,205.95)
Total	26,019.23

[1] Denotes credit.

Accordingly, the adjustment required to conform Licensee's recorded cost of the Lower Baker River development to the recommended cost thereof is a credit amount of $368,185.52 (adjustment to claimed cost of $394,204.75 minus $26,019.23 the excess of claimed cost over book cost).

Also, the staff's examination of Licensee's books of account as of May 1, 1956, disclosed that the claimed accrued depreciation of the Lower Baker River developed exceeded the recorded accrued depreciation thereof by $10,968.00. Licensee's claimed reserve for depreciation applicable to in-service project properties included in the Lower Baker River development as of May 1, 1956, totals $499,513, whereas Licensee's depreciation reserves per books totals $488,545. The adjustment required to conform the recorded depreciation reserve of the Lower Baker River development to the recommended depreciation reserve is a credit amount of $163,682.00 (adjustment to claimed depreciation reserve of $152,714.00 plus $10,968.00, the excess of claimed over recorded reserve).

The proposed accounting dispositions of the amounts involved in the adjustments to bring Licensees recorded or book cost and accrued depreciation of the Lower Baker River development as of May 1, 1956, into agreement with the recommended cost and accrued depreciation of that development tentatively agreed to between the staff and Licensee's representatives are shown by the following composite journal entry:

Account number and title [1]		Details	Debits	Credits
100.1	Electric plant in service, project No. 2150			$368,185.52
	Project No. 2150			
320	Land and land rights	($87,590.95)		
321	Structures and improvements	(54,326.51)		
322	Reservoirs, dams, and waterways	(14,885.62)		
323	Water wheels, turbines, and generators	(254,315.49)		
324	Accessory electric equipment	(3,243.77)		
325	Miscellaneous power plant equipment	50,823.66		
326	Roads, railroads, and bridges	(4,646.84)		
100.1	Electric plant in service:			
	Nonproject		$255,083.87	
	Minor-part project No. 777		10,664.21	
271	Earned surplus		102,437.44	
250.1	Reserve for depreciation of electric plant in service:			
	Nonproject, distribution		163,682.00	
	Project No. 2150, production			163,682.00

[1] Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts for Public Utilities and Licensees effective prior to Jan. 1, 1961. This reflects the fact that the cost of the Lower Baker River development of the project and the applicable reserve for depreciation herein determined are recorded in Licensee's plant accounts and depreciation accounts as of dates prior to Jan. 1, 1961.

After giving effect to the above proposed adjustments, the staff recommends and Licensee, by its letter and revised statement of claimed initial cost and accrued depreciation of the Lower Baker River development filed on May 31, 1962, confirming its agreement to the proposed adjustments, accounting dispositions, and resulting costs and accrued depreciation for that development, concurs that the Commission determine the actual legitimate original cost and initial accrued depreciation of the Lower Baker River development as of May 1, 1956, to be $6,550,291.49 and $652,227.00, respectively, resulting in a net investment of $5,898,064.49, all classified by primary accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees, as shown in the attached schedule.

The Washington Utilities and Transportation Commission was advised by letter of this Commission of the proposed adjustments, accounting dispositions, and resulting costs and accrued depreciation of the Lower Baker River development, all as recommended by the staff and agreed to by Licensee as set forth above. By its letter dated June 15, 1962, that Commission indicated that it had no objection to the staff's recommendations.

The Commission finds:

(1) Licensee, by its tentative agreement and its revised statement of claimed initial cost and accrued depreciation of the Lower Baker River development of Project No. 2150 filed May 31, 1962, and the Washington Utilities and Transportation Commission, by its letter dated June 15, 1962, with respect thereto, have obviated the necessity for notice and opportunity to protest provided by Sections 4.22 and 4.23 of this Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments, including the accounting disposition of all amounts involved therein, are reasonable and appropriate for the purposes of the Federal Power Act, and therefore should be approved and directed as hereinafter provided.

(3) The actual legitimate original cost of the Lower Baker River development of Project No. 2150 as of May 1, 1956, the effective date of the license for the project, is $6,550,291.49 (subject to future examination by reason of Commission approval of project boundaries) and accrued depreciation applicable to in-service project properties of that development of the project as of that date is $652,227.00, resulting in a net investment as of that date of $5,898,064.49, all classified by primary accounts as shown by the attached schedule.

The Commission orders:

(A) The provisions of Sections 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments, including the accounting disposition of all amounts involved therein, as proposed by the staff and agreed to by Licensee, are hereby approved and directed to be made by Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain (a) control and detailed accounts for Project No. 2150 showing the total debit balance of $6,550,291.49 as the actual legitimate original cost (subject to future examination by reason of Commission approval of project boundaries) of the Lower Baker River development of the project as of May 1, 1956, classified by primary accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees; and (b) a reserve for depreciation applicable to in-service project properties of the Lower Baker River development of Project No. 2150 showing the total credit balance of $652,227.00 as of May 1, 1956; resulting in a net investment of $5,898,064.49 in the Lower Baker River development of Project No. 2150 as of May 1, 1956, all as shown in the attached schedule.

(D) Licensee shall within 90 days from the issuance of this order file with the Commission FPC Form No. 7 and three certified copies of its adjusting journal entries showing compliance with this order.

ACTUAL LEGITIMATE ORIGINAL COST AND INITIAL ACCRUED DEPRECIATION AS OF MAY 1, 1956

Account number	Account number and title*	Claimed	Adjustments	Allowed
	(1)	(2)	(3)	(4)
	ELECTRIC PLANT IN SERVICE			
	HYDRAULIC PRODUCTION PLANT			
320	Land and land rights	$600,616.55	($87,831.41)	$512,785.14
321	Structures and improvements	1,072,598.32	(6,162.19)	1,066,436.13
322	Reservoirs, dams, and waterways	3,934,531.04	(12,929.27)	3,921,601.77
323	Water wheels, turbines, and generators	717,942.74	(6,656.87)	711,285.87
324	Accessory electric equipment	214,427.38	(16,930.38)	197,497.00
325	Miscellaneous power plant equipment	86,918.80	296.36	87,215.16
326	Roads, railroads, and bridges	53,386.63	83.79	53,470.42
	Total hydraulic production plant	6,680,421.46	(130,129.97)	6,550,291.49
	TRANSMISSION PLANT			
343	Station equipment	264,074.78	(264,074.78)	
	Total cost of project	6,944,496.24	(394,204.75)	6,550,291.49
	INITIAL ACCRUED DEPRECIATION			
250.1	Reserve for depreciation of electric plant in service:			
	Hydraulic production plant	448,389.00	203,838.00	652,227.00
	Transmission plant	51,124.00	(51,124.00)	
	Total reserve for depreciation	499,513.00	152,714.00	652,227.00
	Net investment as of May 1, 1956	6,444,983.24	546,918.75	5,898,064.49

( ) Denotes credit.

*Account references are to account numbers and titles prescribed in Commission's Uniform System of Accounts for Public Utilities and Licensees effective prior to Jan. 1, 1961.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-53

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 8, 1963)

On September 4, 1962, Southern Natural Gas Company (Applicant) filed in Docket No. CP63-53 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a line tap and a meter and regulator station on Applicant's Yates branch line, Carroll County, Georgia, and the sale and delivery of natural gas at such new delivery point to Atlanta Gas Light Company (Atlanta Gas), an existing customer, for resale and distribution by the latter in the City of Whitesburg, Georgia, all as more fully set forth in the application.

The estimated cost of Applicant's proposed facilities is $14,000, which cost will be financed from cash on hand or from funds available from current operations.

Atlanta Gas will construct and operate a distribution system in Whitesburg and a lateral line from Whitesburg to Applicant's proposed facilities. The initial cost of these facilities is estimated to be $44,000.

The estimated third year maximum daily and annual requirements of Whitesburg are 200 Mcf and 19,565 Mcf, respectively.

Applicant states that Atlanta Gas has received appropriate authorizations from Whitesburg and the Georgia Public Service Commission.

Pursuant to due notice, a public hearing was held in Washington, D.C., on December 18, 1962, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G-296 (3 FPC 822).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's com-

pliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Southern Natural Gas Company, to construct and operate the proposed facilities and to sell and transport natural gas as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within two months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SUN OIL COMPANY, DOCKET NO. G–6650; SOUTH-TEX CORPORATION (OPERATOR), ET AL. (FORMERLY SUN OIL COMPANY), DOCKET NO. RI62–418; SOUTH-TEX CORPORATION, DOCKET NO. RI62–419; ASSOCIATED OIL & GAS COMPANY, DOCKET NO. RI62–420

ORDER DENYING APPLICATION FOR REHEARING

(Issued January 8, 1963)

On December 10, 1962, Sun Oil Company (Sun) filed an application for rehearing of the Commission's order issued November 9, 1962, 28 FPC 802, in the above-designated proceedings. By that order, we accepted a rate filing tendered by South-Tex Corporation (Operator), *et al.* (South-Tex), as operator of the processing plant where Sun's gas is processed, to supersede a previous filing by Sun, a non-signatory non-operator co-owner, and South-Tex was substituted for Sun in the rate suspension proceeding in Docket No. RI62–418. Further, Sun's certificate of public convenience and necessity, issued in Docket No. G–6650, was vacated, and the show cause proceedings against South-Tex and Associated Oil & Gas Company (Associated) were terminated.

The controversy herein arose between Sun and South-Tex since Sun, a non-signatory to the gas sales contract, was prohibited from filing a proposed increased rate pursuant to the provisions of Section 154.91(d) of the Commission's Regulations under the Natural Gas Act, and South-Tex, the operator, refused to file for Sun's interest. In order to protect Sun, the Commission in its May 11, 1962 order accepted for filing Sun's proposed rate and suspended it

for one day in Docket No. RI62–418, 27 FPC 940.[1] The said order also instituted show cause proceedings against South-Tex in Docket No. RI62–419 and Associated[2] in Docket No. RI62–420 to determine, *inter alia*, why either South-Tex or Associated, as an operator who is a signatory party to the gas sales contract, should not make rate filings for Sun, a non-signatory co-owner.

On October 12, 1962, South-Tex filed, on behalf of Sun only, a notice of change dated October 10, 1962, (designated Supplement No. 27 to South-Tex Corporation (Operator), *et al.* FPC Gas Rate Schedule No. 1) requesting that the increased rate of 17.24347¢ per Mcf, which was being collected, subject to refund, by Sun under Docket No. RI62–418, be collected by South-Tex as operator under the subject gas sales contract. In view thereof, the Commission on November 9, 1962, issued the order here complained of.

In support of its application for rehearing, Sun states, *inter alia*, that (1) Sun is a signatory party to the contract with Tennessee to the same extent that South-Tex and Tennessee are signatory parties; (2) South-Tex has no interest in the sale of Sun's gas and is not required to make filings on Sun's behalf; (3) Because it has no interest in Sun's gas, South-Tex is not a proper respondent in the proceeding in Docket No. RI62–418; (4) Order No. 190 (by which Section 154.91(d) was promulgated) cannot be used as a means of depriving Sun of its contract prices, citing *Mississippi River Fuel Corp.* v. *FPC;*[3] and (5) Order No. 190, as applied in this case, cannot be justified on the grounds of administrative ease or convenience.

Sun's assertion that it is a signatory party to the gas purchase contract between South-Tex and Tennessee rests according to Sun's own assertions on the mere fact that South-Tex and Sun executed an agreement whereby Sun authorized South-Tex to sell and deliver its gas to Tennessee[4] pursuant to the terms of the contract between South-Tex and Tennessee. But, the effect thereof was simply to make South-Tex the agent for Sun. Tennessee was not a party to that contract. Sun's action, therefore, does not give Sun signatory status with respect to the gas purchase contract between South-Tex and Tennessee. Moreover, the position of Sun is not in any way similar to the status of South-Tex and Tennessee, as claimed by Sun, for both South-Tex and Tennessee are by succession, signatory parties to the subject sales contract.[5]

In claiming that South-Tex is not a proper respondent in Docket No. RI62–418, Sun seems to be anticipating possible injury to its interests. The Fifth Circuit Court of Appeals in *Sun Oil Company* v. *F.P.C.*, 256 F. 2d 233, rejected the same contentions made by Sun under similar circumstances to those presented here. There the court stated (256 F. 2d 233 at 240):

> It is not shown that the ruling has been or that it will be the means by which the substantial rights of the owners of gas, the sale of which is subject to

[1] Sun's proposed increased rate, from 12.12268¢ to 17.24347¢ per Mcf, designated as Supplement No. 10 to Sun Oil Company's FPC Gas Rate Schedule No. 31, was suspended until May 14, 1962, at which time it became effective subject to refunding obligations assured by Sun's filing of its agreement and undertaking.

[2] In its application for rehearing filed on April 12, 1962 in Docket No. G–6650, Sun stated that it "believes" Associated has succeeded to the interest of South-Tex.

[3] 202 F. 2d 899.

[4] Under the agreement South-Tex would process all of the gas produced from Sun's E. M. Brownlee Lease, Nueces County, Texas and would deliver to Tennessee the quantity of residue gas equal to 95% of the daily quantity of gas delivered by Sun to South-Tex.

[5] Both Tennessee and South-Tex at the time of their respective successions executed amendments to the gas purchase contract with the then seller and buyer, respectively, specifically approving of the substitution of ownership.

regulations, will be adversely affected. We are unwilling to assume that the operators will advance their own interests to the prejudice of a non-operator co-owner. We do not believe that Sun will be without notice or knowledge of any proposed action which might affect its interests. We do not have any fear that the Commission will abuse its discretion by denying Sun the right to intervene in any proceeding where its rights of substance are involved and might be prejudiced if it were deprived of the right to participate. We cannot see that Sun is deprived of any contractual right reserved to it under the operating agreements. * * *

In this regard we point out that the purpose of the Commission's order of May 11, 1962, was to assure that Sun would not be deprived of its contractual rights. Thus, when South-Tex refused to file for Sun, we permitted Sun to make its own rate filing even though under the provisions of Order No. 190 as a non-signatory party to the sales contract Sun was not authorized to file. After South-Tex made the necessary filings to cover Sun's interest herein, there was no longer any reason for permitting Sun's rate filing. Accordingly, in the order of November 9 our prior action of May 11 was vacated. Under the present circumstances there is no reason to believe that Sun's fears will materialize, but in the event they do so, Sun may, of course, request the Commission to again take appropriate action to insure the protection of its rights.

The *Mississippi* case cited by Sun is not applicable to the present situation. In that case the court held that the Commission could not without a hearing reject a rate filing of a pipeline company, which the court held met all of the formal filing requirements, on the ground that a portion of the increase was unjustified because based upon expected increased gas purchase costs not yet requested by its supplier. However, in the instant case Sun's filing was originally rejected because under Order No. 190, as a non-signatory party, Sun was not entitled to make a rate filing. Thus, Sun did not comply with the prescribed filing requirements.

The remaining contentions advanced by Sun with respect to the validity of Order No. 190 were disposed of by the court in *Sun Oil Company* v. *F.P.C.*, 256 F. 2d 233. In that case the court approved the Commission's action of vacating Sun's certificate authorizations and rescinding its rate schedules in those instances where, as here, Sun was not a signatory party to the sales contract, and was adequately covered by the filings of the signatory party to such contract. The mere fact that South-Tex initially would not file for Sun does not in our view warrant permanent relaxation of the provisions of Order No. 190 in this case. Inasmuch as South-Tex has now filed for Sun there is no longer need or justification for allowing Sun to file its own rate schedule.

The Commission finds:

The assignments of error and grounds for rehearing set forth in Sun's application for rehearing present no new facts or principles on law which were not considered by the Commission when it issued its order of November 9, 1962, or which having now been considered warrant any change or modification of said order.

The Commission orders:

The application for rehearing filed by Sun Oil Company on December 10, 1962, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr. and Harold C. Woodward.

INTERIM ACCOUNTING TREATMENT OF INVESTMENT TAX CREDIT UNDER 1962 AMENDMENTS TO INTERNAL REVENUE CODE BY PUBLIC UTILITIES, LICENSEES, AND NATURAL GAS PIPELINE COMPANIES, DOCKET NO. R-231

ORDER NO. 261

ORDER PRESCRIBING INTERIM ACCOUNTING FOR INVESTMENT TAX CREDIT

(Issuing January 9, 1963)*

The Commission has under consideration in this matter the accounting disposition by public utilities, licensees and natural gas companies of the tax credit for investment in certain depreciable property (investment tax credit) provided under section 2 of the Internal Revenue Act of 1962 (26 USC 38).

By letter of the Secretary of December 11, 1962, natural gas pipeline companies were advised that in the absence of any amendment to the Uniform System of Accounts they should account for the investment tax credit by use of Account 409, Income Taxes, to reflect the actual taxes paid. That letter also made clear that the Commission had reached no final determination as to how the investment credit should be accounted for and that the Commission reserved the right to make subsequent accounting adjustments should it later determine a different accounting treatment more appropriate.

After further consideration the Commission has concluded that there is no adequate basis at this time for requiring the sole use of Account 409 as provided in the Secretary's letter of December 11, 1962. There is considerable disagreement among accountants, industry representatives, and other experts as to the proper accounting disposition of the investment tax credit. The Commission believes that it must give careful consideration to all of the possible accounting dispositions of the investment tax credit before prescribing a permanent accounting requirement under its Uniform System of Accounts. A rulemaking proceeding to accomplish this is contemplated in the near future. However, in view of the fact that public utilities, licensees and natural gas companies must soon close their books for 1962 and the further fact that this Commission has not finalized its accounting requirements for the investment tax credit, it is necessary and proper for the Commission to order, effective immediately, interim accounting requirements which will allow the companies to close their books for 1962, but which will hold in suspense for future Commission consideration the final accounting disposition of the tax credit amounts.

The accounting disposition which the public utilities, licensees and natural gas companies will be required to follow with respect to the investment tax credit during this interim period is as follows:

(1) Credit Account No. 253, Other Deferred Credits, in the full amount of the investment tax credit allowed;

(2) Debit Account No. 426, Other Income Deductions, in a corresponding amount.

The effect of this accounting treatment will be to reflect actual taxes paid in Account 409, Income Taxes, and yet not to reflect any change in net income as a result of the investment tax credit.

Upon final determination by the Commission of permanent accounting requirements for the investment tax credit, the companies will be required by the Com-

*Published in the Federal Register on January 16, 1963 (28 F.R. 402).

Order issued January 23, 1964, extending Interim Accounting Treatment prescribed here. 31 FPC 175.

mission to adjust their accounts and any filings made under this interim accounting procedure to conform with the procedure established after opportunity for hearing.

In view of the fact that public utilities, licensees and natural gas pipeline companies must soon close their books for 1962, companies would be prejudiced by any delay in the issuance of this order prescribing temporary accounting for the purpose of permitting them to close their books. Therefore, to postpone issuance of this order until after issuance of notice and the elapse of the prescribed time would be impracticable and contrary to the public interest, and the notice requirements of Section 4(a) of the Administrative Procedure Act (5 U.S.C. 1003; 60 Stat. 238) do not apply.

The Commission finds:

(1) Notice and opportunity to comment in this rulemaking proceeding with respect to the matters presently before the Commission is not required by Section 4 of the Administrative Procedure Act by reason of the fact that notice would be impracticable and contrary to the public interest for the reasons set forth above.

(2) In view of the foregoing, and upon consideration of all relevant matters presented, it is necessary and appropriate for purposes of the Federal Power Act and the Natural Gas Act that the investment tax credit be treated for accounting purposes by public utilities, licensees, and natural gas pipeline companies as follows, pending final determination by the Commission of permanent accounting disposition therefor:

(a) Credit Account No. 253, Other Deferred Credits, in the full amount of the investment tax credit allowed;

(b) Debit Account No. 426, Other Income Deductions, in a corresponding amount.

(3) In view of the facts set out above, good cause exists that this revision be effective as of the date of the issuance of this order.

The Commission, acting pursuant to the authority granted by the Federal Power Act, particularly sections 301, 304, and 309 thereof (49 Stat. 854, 855, 858; 16 U.S.C. 825(a), 825c(a) and 825h) and by the Natural Gas Act, particularly sections 8, 10 and 16 thereof (52 Stat. 825, 826, 830; 15 U.S.C. 717g, 717i and 717o) *orders:*

(A) In closing their books of account for calendar year 1962 and in accounting for income taxes until further notice, all public utilities, licensees, and natural gas pipeline companies subject to the jurisdiction of this Commission under the Federal Power Act and the Natural Gas Act shall account for the investment tax credit provided under section 2 of the Internal Revenue Act of 1962 (26 U.S.C. 38) as follows:

(1) Credit Account No. 253, Other Deferred Credits, in the full amount of the investment tax credit allowed;

(2) Debit Account No. 426, Other Income Deductions, in the full amount of the investment tax credit allowed.

(B) All public utilities, licensees, and natural gas pipeline companies will be required subsequently to adjust their accounts and to revise any filings submitted to this Commission on the basis of the interim accounting prescribed herein, to meet permanent accounting requirements for the investment tax credit subsequently to be prescribed by this Commission.

(C) This order shall be effective upon the date of issuance thereof.

(D) The Secretary of the Commission shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. CP63-80

ORDER DENYING INTERVENTION

(Issued January 11, 1963)*

The above-entitled proceeding concerns an application of Midwestern Gas Transmission Company (Midwestern) for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities for the purpose of testing and evaluating three proposed storage fields located in Illinois.

On December 31, 1962, George F. Toney, *et al.*[1] (Petitioners) filed a petition to intervene in this proceeding. Petitioners claim that (1) they own substantial property interests in one of the three proposed storage fields to be tested and evaluated, namely the Elbridge Field, Edgar County, Illinois, (2) they have an interest which is directly affected by the proposed testing, which interest is not adequately represented by the existing parties, and (3) the proposed testing and evaluating of the Elbridge Field by Midwestern is not necessary or desirable in the public interest.

On January 7, 1963, Midwestern filed an answer in opposition to the subject petition to intervene. In its answer Midwestern states, among other things, that the subject petition to intervene does not comply with Section 1.8 of the Commission's Rules of Practice and Procedure in that no facts are set forth to show that intervention by Petitioners is necessary or appropriate to the administration of the Natural Gas Act or that Petitioners' participation may be in the public interest. Midwestern claims that Petitioners' only alleged direct interest in this proceeding is based entirely upon alleged property interests in the Elbridge Field. Midwestern further claims that Petitioners' alleged property interests have been and will be fully protected by the laws of the State of Illinois and the proper local forum having jurisdiction of such matters and being endowed with eminent domain powers. Midwestern states further that Petitioners' only other interest in this proceeding is a professed desire that the application be disposed of in the manner required by the public convenience and necessity, coupled with unsupported allegations that the proposed storage project is not in the public interest.

The only issue of fact or law which Petitioners would raise pertains to their claimed property interests. Thus Petitioners seem erroneously to have assumed that we have power either to dispose or adjudicate the extent of their property interests. We cannot by issuing a certificate confer upon Midwestern the powers to condemn Petitioners' property rights and are not called upon in this certificate proceeding to determine the extent of Petitioners' ownership. Even if Midwestern was issued a certificate, its enjoyment of it will depend on its securing and/or quieting all necessary title through judicial proceedings. Our action in denying intervention here is in accord with our past actions which

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*Rehearing denied by order issued January 25, 1963, *infra*. p. 153.

[1] George F. Toney, Bertha M. Toney, James H. Mason, Alta Mason, Delbert O. Dunlap, Robert Dunlap, Dorothea R. Dunlap, Joseph Dunlap, Maude Dunlap, Imogene Dunlap, Earl Cockcroft, Gladys Cockcroft, Waller F. Barkley, Elsie E. Barkley, Frank Stratton, Max Landes, H. B. Lukken, Nina C. Lukken, Sherman A. Maynard, Harold Cartwright, Leatha Cartwright, Esther Shanks, Dell Shanks, Kenneth R. Wilholt, Mildred N. Wilholt, Harry C. Scott, Dorothy Scott, Maude Barkley and Irving W. Voorhees.

have denied intervention to owners of property who, as a sole basis for intervention, have alleged that their property interest would be damaged by the issuance of a certificate of public convenience and necessity to a natural gas company. See *New York State Natural Gas Corporation, et al.*, Docket No. CP62–275 (issued December 4, 1962, 28 FPC 938); *Texas Eastern Transmission Corporation, et al.*, (27 FPC 391) and *Atlantic Seaboard Corporation* (27 FPC 370).

The Commission finds:

The petition to intervene filed by George F. Toney, *et. al.*, fails to set out facts or grounds calling for grant of intervention.

The Commission orders:

The petition to intervene of George F. Toney, *et al.*, is denied.

Commissioner Morgan *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NOS. G–11980, G–17166, AND G–19983

ORDER AMENDING ORDER APPROVING RATE SETTLEMENT, PRESCRIBING REFUNDS AND TERMINATING PROCEEDINGS

(Issued January 11, 1963)

By order issued December 21, 1962, 28 FPC 1100, the Commission approved a settlement in the above listed rate proceedings. Pursuant to that order and as provided in the Stipulation and Agreement identified as Exhibit 6 in these proceedings, the settlement was made applicable to all parties except Pennsylvania Gas and Water (Penn. Gas & Water) which had objected to the settlement.

On January 7, 1963, Penn. Gas & Water filed a letter with the Commission requesting that the Commission issue a supplemental order making the December 21, 1962, order applicable to it.

The Commission finds:

It is in the public interest that the settlement, heretofore approved as to all other parties in the above listed proceedings be made applicable to Penn. Gas & Water.

The Commission orders:

(A) The order issued December 21, 1962, in the above listed proceedings is hereby modified and amended to eliminate therefrom those parts of paragraphs (2) and (3) of the Commission's findings (page 11) and paragraphs (A), (B), (C), and (G) (pages 11 and 12) which except the application thereof to Pennsylvania Gas and Water Company, and the settlement therein approved is hereby made applicable to that company.

(B) The pre-hearing conference in these dockets scheduled to convene on January 22, 1963, is hereby cancelled.

(C) Except to the extent hereinabove modified, the order issued December 21, 1962, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NOS. G–1895 AND G–11080

FINDINGS AND ORDER AMENDING ORDERS ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 14, 1963)

On July 27, 1962, El Paso Natural Gas Company (Applicant) filed in Docket Nos. G–1895 and G–11080 an application to amend the orders in said dockets issued April 4, 1952 (11 FPC 936), and January 9, 1958 (19 FPC 78), respectively, to delete therefrom the quantity restrictions applicable to maximum daily and annual deliveries of natural gas to Arizona Public Service Company (Arizona) and El Paso Natural Gas Products Company (Products Company), all as more fully set forth in the application to amend.

In Docket No. G–1895, Applicant was authorized to construct and operate certain facilities and to sell and deliver up to 3,502,000 Mcf of gas annually and up to 12,000 Mcf of gas per day to Arizona for resale to Salt River Project Agricultural Improvement and Power District[1] for use in its Kyrene Power Plant located in Maricopa County, Arizona. In anticipation of future periodic abnormal loading of the Kyrene plant such as that which occured during the calendar year 1961, Applicant requests that the quantity restrictions on deliveries to Arizona be removed.

In Docket No. G–11080 Applicant was authorized, among other things, to deliver up to 1,230 Mcf of gas to Products Company for use in its Ciniza Refinery and Wingate and Bisti Pumping Stations. Applicant and Products Company have entered into an agreement amending the basic agreement regarding daily volumes in Mcf as follows:

	Original agreement	Amended agreement
Ciniza refinery	1,100	5,000
Wingate pumping station	100	100
Bisti pumping station	30	50
Total	1,230	5,150

The amended agreement reflects the customer's requirements as demonstrated during the calendar year 1961, and accordingly Applicant requests that the quantity restriction on deliveries to Products Company be removed.

The orders in the subject dockets will be amended to increase the maximum daily delivery restriction to Products Company from 1,230 Mcf to 5,150 Mcf of gas and to increase the maximum daily delivery restriction to Arizona from 12,000 Mcf to 25,000 Mcf of gas which Applicant's 1961 experience has shown to be necessary. Sufficient reasons have not been submitted to warrant the removal of the annual volume limitation on the sale to Arizona, and so said limitation shall remain unchanged.

Notice of the filing of the application to amend was issued November 16, 1962, and published in the Federal Register on November 24, 1962 (27 FR 11571). No protest, request for hearing, or petition to intervene has been received.

[1] Formerly Salt River Valley Water Users Association.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and required by the public convenience and necessity that the orders in Docket Nos. G–1895 and G–11080 should be amended to restrict the maximum daily deliveries of natural gas by Applicant, El Paso Natural Gas Company, to Arizona Public Service Company for resale to Salt River Project Agricultural Improvement and Power District to 25,000 Mcf, and to El Paso Natural Gas Products Company for use in the Ciniza Refinery and Wingate and Bisti Pumping Stations to 5,150 Mcf.

The Commission orders:

(A) The orders in Docket Nos. G–1895 and G–11080 be and the same are hereby amended to restrict maximum daily deliveries of natural gas by Applicant, El Paso Natural Gas Company, to Arizona Public Service Company for resale to Salt River Project Agricultural Improvement and Power District to 25,000 Mcf, and to El Paso Natural Gas Products Company for use in the Ciniza Refinery and Wingate and Bisti Pumping Stations to 5,150 Mcf.

(B) In all other respects, said orders shall remain unchanged and in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Howard C. Woodward.

THE EMPIRE DISTRICT ELECTRIC COMPANY, PROJECT NO. 2221

ORDER DETERMINING NET INVESTMENT; ACTUAL LEGITIMATE ORIGINAL PROJECT COST AND NET CHANGE THEREIN; ACCRUED DEPRECIATION; AND PRESCRIBING ACCOUNTING THEREFOR

(Issued January 14, 1963)

The Empire District Electric Company, Licensee for Project No. 2221,[1] on May 25, 1959, filed its statement of project cost pursuant to Sections 4.1 and 4.20 of the Commission's Regulations under the Federal Power Act, claiming as of September 1, 1958, an actual legitimate original cost of Project No. 2221 in the total amount of $2,559,351.88; accrued depreciation applicable to inservice project properties as of that date in the amount of $963,817.68; and a resulting net investment of Licensee in the project in the amount of $1,595,534.20 as of that date.[2] In addition, Licensee's books and records show for the period from September 1, 1958, through December 31, 1960, a net increase in project cost of $49,735.06, resulting in a total claimed or recorded actual legitimate original cost of the project as of December 31, 1960, of $2,609,086.94. The recorded net increase of $49,735.06 in the cost of the project for that period results from recorded project gross additions of $77,126.99 and gross retirements of $27,391.93.

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[1] The project is located on the White River in Taney County, Missouri, in the vicinity of Forsyth and Branson, Missouri, and is known as the Ozark Beach Project. The license, authorizing the operation and maintenance of the constructed project, was issued (pursuant to Section 4(e) of the Federal Power Act) for a period of 10 years, commencing September 1, 1958.

[2] Article 13 of the license and Section 4 of the Federal Power Act provide that the Commission shall determine the actual legitimate original cost of the project and accrued depreciation applicable thereto as of the effective date of the license, and that such cost less such accrued depreciation, so determined, shall be the net investment in the project as of such effective date. These provisions also apply to changes in the actual legitimate original cost and related depreciation thereafter.

During the period from September 1, 1958, through December 31, 1960, Licensee also recorded upon its books of account entries in its depreciation reserve account for the project in the net credit amount of $101,954.36, making a balance in that account of $1,065,772.04 as of December 31, 1960.

The Commission's staff made a field examination of the books and records of Licensee and other data for the purpose of ascertaining the correctness of the foregoing amounts. Following that study an agreement, subject to Commission approval, was reached between the staff and Licensee's representatives with respect to certain adjustments involving (1) the elimination of the net amount of $322,523.70 from claimed and recorded project cost as of September 1, 1958; (2) net decrease in the claimed and recorded project reserve for depreciation of $146,360.23 as of September 1, 1958, and $15,392.56 in the period from September 1, 1958, through December 31, 1960, for a total decrease of $161,752.79 as of December 31, 1960, all resulting from the staff's aforesaid proposed adjustments; and (3) the accounting dispositions of all amounts involved in the proposed adjustments. The staff proposes no adjustments to the recorded cost of project plant changes for the period from September 1, 1958, through December 31, 1960.

The proposed eliminations from claimed project cost are associated with the following items:

War Department permit obtained by predecessor of Licensee	($5,091.57)
Flood damages improperly capitalized	(5,600.00)
Duplicate project survey	(3,060.60)
Dwelling transfer to non-utility plant	(8,223.04)
Substation equipment and overhead transfer to non-project plant	(126,670.26)
Various maintenance costs capitalized	(160,243.53)
Various unrecorded retirements	(13,584.70)
Portion of easement cost set aside through litigation	(50.00)
Total	(322,523.70)

The accounting disposition of amounts included in the proposed adjustments required to bring the recorded project costs and accrued depreciation into agreement with the staff recommended amounts as of December 31, 1960, all as tentatively agreed to between Licensee and staff, is shown by the following composite journal entry:

		Debit	Credit
Account 101	Electric plant in service: [1]		
	Project No. 2221		$322,523.70
	Nonproject	$126,670.26	
Account 108	Accumulated provision for depreciation of electric plant in service:		
	Project No. 2221	161,752.79	
	Nonproject		79,079.44
Account 121	Nonutility property	8,223.04	
Account 122	Accumulated provision for depreciation and amortization of nonutility property.		2,151.79
Account 262.1	Injuries and damages reserve	4,000.00	
Account 435	Miscellaneous debits to surplus	103,108.84	

[1] Account references are to account numbers and titles prescribed in the Commission's revised Uniform System of Accounts for Public Utilities and Licensees effective Jan. 1, 1961, except account references in attached Schedule I, which are to account numbers and titles prescribed in the Commission's Uniform System of Accounts effective prior to Jan. 1, 1961. This reflects the fact that the project costs herein determined are recorded in Licensee's plant accounts as of dates prior to Jan. 1, 1961.

Licensee in concurring in the staff recommendations also proposes to continue the annual depreciation rates which it has applied to depreciable project

properties since January 1, 1953, unless reductions therein are approved by this Commission. Those depreciation rates are as follows:

Account No.	Account	Percentage
331	Structures and improvements	1.7
332	Reservoirs, dams, and waterways	1.5
333	Water wheels, turbines, and generators	2.5
334	Accessory electric equipment	2.9
335	Miscellaneous power plant equipment	3.0
353	Station equipment	3.1

After giving effect to the adjustments referred to above, the staff recommends and Licensee concurs that the Commission determine: the project cost, reserve for accrued depreciation applicable to inservice project properties and resulting net investment of Licensee in Project No. 2221 as of September 1, 1958; net change in project cost and reserve for project accrued depreciation for the period from September 1, 1958, through December 31, 1960; and resulting project cost and reserve for project accrued depreciation as of December 31, 1960; all as more fully set forth in the numbered findings below.

By letters dated January 22 and May 17, 1962, Licensee confirmed its agreement with the staff's proposed adjustments, accounting dispositions and resulting project costs and reserves for accrued depreciation applicable to inservice project properties as described above.

The Missouri Public Service Commission was advised by letter of this Commission dated July 26, 1962, of the proposed adjustments, accounting dispositions, and resulting project costs and reserves for accrued depreciation. By undated letter received August 3, 1962, that Commission indicated that it had no objection thereto.

The Commission finds:

(1) Licensee, by its tentative agreement to the staff recommendations herein evidenced by its letters dated January 22 and May 17, 1962, and the Missouri Public Service Commission, by its letter received August 3, 1962, have obviated the necessity for notice and opportunity to protest provided by Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments including the accounting disposition of all amounts involved therein are reasonable and appropriate for the purposes of the Federal Power Act and therefore should be approved and directed as hereinafter provided.

(3) As of the effective date of the license, September 1, 1958, the actual legitimate original cost of Project No. 2221 is $2,236,828.18; the reserve for accrued depreciation applicable to inservice project properties is $817,457.45; and the resulting net investment of Licensee therein is $1,419,370.73.

The net increase or change in the actual legitimate original cost of Project No. 2221 for the period from September 1, 1958, through December 31, 1960, is $49,735.06, consisting of gross project additions of $77,126.99 and project retirements of $27,391.93. The net increase or change in the reserve for accrued depreciation applicable to inservice project properties of Project No. 2221 for the period from September 1, 1958, through December 31, 1960, is $86,561.80.

The actual legitimate original cost of Project No. 2221, as of December 31, 1960, is $2,286,563.24; and the reserve for accrued depreciation applicable to inservice project properties of Project No. 2221 as of that date is $904,019.25; all as more specifically set forth in the attached Schedules I and II.

(4) It is necessary and appropriate for the purposes of the Federal Power Act that Licensee be directed to make provision for annual depreciation of de-

preciable inservice project properties of Project No. 2221 at rates not less than the depreciation rates set forth in the recital above, unless otherwise ordered by this Commission.

The Commission orders:

(A) The provisions of Section 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments including the accounting disposition of all amounts involved therein as proposed by the staff and agreed to by the Licensee are hereby approved and directed to be made by the Licensee.

(C) Licensee, to the extent that it has not already done so, shall (a) establish and maintain control and detailed project plant accounts for Project No. 2221, showing the debit balance of $2,236,828.18 as of September 1, 1958; the debit amount of $49,735.06 as the net increase or change in project plant accounts during the period from September 1, 1958, through December 31, 1960; and the total debit balance of $2,286,563.24 as of December 31, 1960; all as more specifically shown by primary plant accounts as set forth in the attached Schedule I; and (b) establish and maintain a reserve account for accrued depreciation for Project No. 2221 showing the credit balance of $817,457.45 as of September 1, 1958; the credit amount of $86,561.80 as the net increase or change in the reserve for accrued depreciation applicable to inservice project properties for the period from September 1, 1958, through December 31, 1960; and the credit balance of $904.019.25 as of December 31, 1960; all classified by functional groups as shown in the attached Schedule II.

(D) Licensee shall within 90 days from the date of issuance of this order file FPC Form No. 7 and three certified copies of its journal entries showing compliance therewith.

(E) Licensee shall make provision for annual depreciation of depreciable inservice project properties of Project No. 2221 at rates not less than the depreciation rates set forth in the recital above, unless otherwise ordered by this Commission.

SCHEDULE I.—THE EMPIRE DISTRICT ELECTRIC COMPANY, PROJECT NO. 2221, MISSOURI-OZARK BEACH ACTUAL LEGITIMATE ORIGINAL COST

Account No.	Accounts	Claimed cost Sept. 1, 1958	Staff adjustments	Allowed cost as adjusted Sept. 1, 1958	Allowed cost of net additions Sept. 1, 1958-Dec. 31, 1960, as recorded	Allowed project cost Dec. 31, 1960
	Hydraulic production plant					
320	Land and land rights	$241,853.50	($13,802.17)	$228,051.33	($3,944.53)	$224,106.80
321	Structures and improvements	185,810.89	(24,501.92)	161,308.97	4,716.06	166,025.03
322	Reservoirs, dams, and waterways	1,336,964.87	(148,108.95)	1,188,855.92	1,706.77	1,190,562.69
323	Water wheels, turbines and generators	319,365.84	0	319,365.84	28,478.42	347,844.26
324	Accessory electric equipment	105,594.52	(7,573.31)	98,021.21	171.77	98,192.98
325	Miscellaneous power plant equipment	69,605.10	(3,574.91)	66,030.19	8,599.88	74,630.07
	Total production plant	2,259,194.72	(197,561.26)	2,061,633.46	39,728.37	2,101,361.83
	Transmission plant					
	Station equipment	300,157.16	(124,962.44)	175,194.72	10,006.69	185,201.41
	Total	2,559,351.88	(322,523.70)	2,236,828.18	49,735.06	2,286,563.24

SCHEDULE II.—THE EMPIRE DISTRICT ELECTRIC COMPANY PROJECT NO. 2221—MISSOURI-OZARK BEACH

SUMMARY BY FUNCTIONAL GROUPS OF ACCUMULATED PROVISION FOR DEPRECIATION OF ELECTRIC PLANT IN SERVICE AS RECORDED, ADJUSTMENTS AND BALANCES ALLOWED AS OF SEPT. 1, 1958, AND DEC. 31, 1960

	As recorded	Staff	
		Adjustments (Dr.) Cr.	Allowed
Accumulated provision for depreciation of electric plant in service project No. 2221:			
Sept. 1, 1958:			
Hydraulis production	$787,077.35	($76,844.16)	$710,233.19
Transmission	176,740.33	(69,516.07)	107,224.26
Total	963,817.68	(146,360.23)	817,457.45
Net changes Sept. 1, 1958, to Dec. 31, 1960:			
Hydraulic production	76,417.00	(6,353.60)	70,063.40
Transmission	25,537.36	(9,038.96)	16,498.40
Total	101,954.36	(15,392.56)	86,561.80
Dec. 31, 1960:			
Hydraulic production	863,494.35	(83,197.76)	780,296.59
Transmission	202,277.69	(78,555.03)	123,722.66
Total	1,065,722.04	(161,752.79)	904,019.25

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

HURLEY OIL AND GAS COMPANY, DOCKET NO. G–17775

ORDER DENYING MOTION OF NEW YORK TO ANNUL TEMPORARY CERTIFICATE, ETC., DENYING NEW YORK'S APPLICATION FOR REHEARING, VACATING THE COMMISSION'S LETTER ORDER OF JUNE 29, 1960, REINSTATING LETTER OF MARCH 11, 1959, AND REFERRING HURLEY'S MOTION FOR REMOVAL OF PRICE REFUND CONDITION TO PRESIDING EXAMINER FOR DECISION AS PART OF INITIAL DECISION

(Issued January 14, 1963)*

On November 8, 1962, the Public Service Commission of the State of New York (New York), filed an application for rehearing and reconsideration of a claimed denial of its motion to annul a temporary certificate of public convenience and necessity issued to the Hurley Oil and Gas Company (Hurley) on March 11, 1959 and which has been effective since that date. New York filed its motion on September 18, 1962 and assumed, since it wasn't expressly acted upon by the Commission, that it was automatically denied within 30 days by operation of Section 1.12(e) of the Commission's Rules of Practice and Procedure. Upon this assumed denial, New York filed pursuant to Section 19(a) of the Natural Gas Act and Section 1.34 of our Rules the application for rehearing we are now considering. On December 6, 1962, 28 FPC 946, we granted rehearing in order to afford further time for consideration of the issues raised. Inasmuch as New York incorporates the contents of its motion in its application for rehearing, and in fact makes no new contentions, we shall make a joint disposition of them both.

New York raises the following contentions in its pleadings: (1) that the Commission should annul, *ab initio*, the temporary certificate issued to Hurley

* Reconsideration denied by order issued March 4, 1963, 29 FPC 417.

because no emergency conditions existed as defined within the scope of Section 7(c) of the Natural Gas Act as interpreted by the United States Court of Appeals in *Algonquin Gas Transmission Co.* v. *F.P.C.*, 201 F. 2d 334 (CA 1, 1953); (2) that Hurley's Rate Schedule No. 8 (the contract underlying the certificate) should be cancelled; (3) that Hurley should be directed to terminate deliveries under Rate Schedule No. 8; and (4) that Hurley should be directed to refund all amounts of money collected for gas sold pursuant to the temporary certificate in excess of 20¢ per Mcf.

Hurley produces natural gas from a single well located in the Vacherie Field in St. James Parish, Southern Louisiana. On February 4, 1959, Hurley filed an application for a certificate of public convenience and necessity and at the same time invoked Section 157.28 of the Regulations under the Natural Gas Act to sell gas to Transcontinental Gas Pipe Line Corporation for a total initial price of 23.05¢ per Mcf, of which 2.05¢ was for reimbursement to Hurley for taxes paid to the State of Louisiana. Hurley's bases for invoking the emergency provision for the sale of gas, and upon which the letter order—temporary certificate issued on March 11, 1959, were that shut-in royalty payments had been made for four years prior to its application and an anticipated payment of an additional $5,250.00 also would be due unless a temporary issued, all of which resulted in an economic hardship on the applicant. Also, Hurley pleaded that the adjoining landowner, a sugarcane grower, granted a right of way with a provision that the gathering line to Transcontinental's facilities be constructed within six months.

The issuance of the temporary certificate was specifically conditioned upon "* * * Hurley refunding to Transcontinental any amounts in excess of the amount resulting from the rate finally determined to be proper in Docket No. G-17775." Hurley accepted the conditioned certificate on March 18, 1959, but moved, on May 12, 1960 that the refund provision be deleted from the temporary. Meanwhile, on April 13, 1960, New York filed a "Notice of Intervention" in the proceedings designated as *Transcontinental Gas Pipe Line Corp., et al.*, Docket No. G-20107, *et al.*, which included, among other producer applications, the Hurley application. New York, according to the certificate of service attached to its Notice of Intervention, served a copy upon Hurley. Also, the Commission order of April 29, 1960, recognizing New York's intervention was served upon Hurley.[1] However, Hurley failed to serve a copy of its "Motion To Remove Price Refund Condition From Temporary Authority," filed May 12, 1960 on any party to the proceeding except Transcontinental. On June 29, 1960, the Commission granted Hurley's unopposed motion and deleted the refund condition as requested.

New York's contentions with respect to the type of emergency conditions in which we are empowered to issue temporary certificates are properly rejected for the same reasons which caused us to reject identical contentions made by New York in other pending producer dockets. See the other issued December 31, 1962, in *J. Ray McDermott & Co., Inc., et al.*, Docket No. CI63-301, *et al.*, 28 FPC 1300.

However, the complaint by New York that it was not served with a copy of the motion for the removal of the refund condition and that it was not, therefore, afforded an opportunity to oppose the motion has a definite persuasive appeal. Our *Rules*, Section 1.17(b) are clear on the point that New York, as a participant in the *Transcontinental, et al.* proceedings, was entitled to a copy of Hurley's

[1] See the Commission's order issued in *Transcontinental Gas Pipe Corporation, et al.*, Docket No. G-20107, *et al.*, issued April 29, 1960.

motion. Fundamental concepts of due process, of course, require as much. Accordingly, the amending letter order issued on June 29, 1960 necessarily must be vacated and the original letter order issued on February 4, 1959 reinstated.

Adoption of this procedure is basically fair to both Hurley and the consumers represented by New York. Hurley, of course, accepted the first letter order and was expressly agreeable to the refund condition. It urged removal thereof only because temporary certificates were issued to other producers in allegedly comparable circumstances without similar provisions for a possible refund of monies collected in excess of the ultimate rate determined to be proper. New York should be allowed to oppose Hurley's motion by demonstrating with appropriate evidence the disposition it considers proper. Likewise, Hurley should be given opportunity to present evidentiary support for the motion. Accordingly, inasmuch as the motion for the removal of the refund condition is an integral part of the question of the in-line price at which Hurley's sales should be permanently certificated, it should be referred to the presiding examiner to be ruled upon as part of his recommended initial decision. In this connection, we have consolidated Hurley's permanent certificate application with other producer applications and fix date for hearing thereof by an order issued December 31, 1962, in the proceedings designated as *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*

New York's request that Hurley's deliveries be terminated along with the cancellation of its Rate Schedule No. 8 and that monies be immediately refunded down to a level arbitrarily selected by New York are rejected as being without factual or legal support. Such a course of action would be inimical to the public interest absent the development of a proper record showing that the abandonment of Hurley's sales meets the test of Section 7(b) of the Gas Act. Certainly, at this point in the development of the record, we could not make a finding that the public interest would not "be disserved" if the Hurley deliveries were terminated. *Michigan Consolidated Gas Co.* v. *F.P.C.*, 283 F. 2d 204, 214.

The last remaining question relates to the operation of Section 1.12(e) of our Rules and whether it is intended to deny *all* motions filed with the Commission unless otherwise expressly disposed of within 30 days. This Rule has never been so construed. A close reading of the entire Section 1.12 indicates that the denial of motions by the passage of time is confined to motions arising out of hearings before one of the Commission's duly appointed presiding examiners, unless a waiver of the rule is obtained. Moreover, the practice of the Commission is to act expressly upon all motions addressed to it. For these reasons, New York's interpretation of the operation of Section 1.12(e) as denying its motion to annul is erroneous, but to the extent that ambiguity may have existed, we have entertained New York's application for rehearing and except as otherwise noted, deny it for the reasons set forth above.

The Commission finds:

(1) The motion of New York to annul Hurley's temporary certificate, filed September 18, 1962, should be denied.

(2) The application filed November 8, 1962, by New York requesting rehearing and reconsideration of the claimed denial of its motion to annul by the operation of Section 1.12(e) of our Rules should be denied for the same reasons now expressly set forth herein requiring the denial of the motion to annul.

(3) The order, issued on June 29, 1960, amending the order of March 11, 1959 should be vacated.

(4) The motion to remove the price refund condition from the temporary certificate issued to Hurley on March 11, 1959 should be referred to the presid-

ing examiner to be ruled upon, in connection with, and as a part of his initial decision after the conclusion of the hearing upon Hurley's application.

The Commission orders:

(A) The motion of New York to annul Hurley's temporary certificate, filed September 18, 1962, is denied.

(B) The application filed November 8, 1962, by New York requesting rehearing and reconsideration of the claimed denial of its motion to annul by the operation of Section 1.12(e) of our Rules is denied for the same reasons now expressly set forth herein requiring the denial of the motion to annul.

(C) The order, issued on June 29, 1960, amending the order of March 11, 1959 is vacated and the latter order reinstated.

(D) The motion to remove the price refund condition from the temporary certificate issued to Hurley on March 11, 1959 is referred to the presiding examiner in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, to be ruled upon, in connection with, and as a part of his initial decision after the conclusion of the hearing upon Hurley's application.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MISSISSIPPI RIVER FUEL CORPORATION, DOCKET NO. G–19495

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 14, 1963)

On September 17, 1962, Mississippi River Fuel Corporation (Applicant) filed in Docket No. G–19495 an application to amend the Commission's order issued January 4, 1960, 23 FPC 8, as amended, in Docket No. G–19495 so as to authorize the construction during 1963 and the operation of 1,350 additional horsepower compressor facilities in the Woodlawn Field, Harrison County, Texas, all as more fully set forth in the application.

The order of January 4, 1960, as amended, authorized Applicant, among other things, to construct and operate additional compressor horsepower on its field supply system in the Woodlawn Field in order to take into its system natural gas from producers' wells in said field. Applicant, as of September 1, 1962, had in operation on the system ten field compressors with an aggregate of 3,594 horsepower. By order issued July 10, 1962, 28 FPC 101, in this docket, Applicant was authorized to construct during 1962 and operate an additional 675 compressor horsepower. Applicant states that by the end of 1962 it expects to install and place in operation 515 of the additional compressor horsepower authorized by the order of July 10, 1962. Applicant states further that, as a result of the decline in field pressures in the Woodlawn Field, 1,350 additional horsepower compressor facilities may be needed during 1963.

The cost of the proposed facilities is estimated to be $239,790, which cost will be financed from cash on hand.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on November 9, 1962 (27 F.R. 10980). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate to carry out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's

order, issued January 4, 1960, as amended, in Docket No. G–19495 be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued January 4, 1960, as amended, in Docket No. G–19495 is hereby further amended by authorizing Applicant to construct during 1963 and to operate up to 1,350 compressor horsepower in addition to the previously authorized compressor horsepower in the Woodlawn Field as hereinbefore described, all as more fully described in the application to amend.

(B) In all other respects, said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

THE RAMONA GAS AUTHORITY, DOCKET NO. CP63–33

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued January 14, 1963)

On July 30, 1962, as supplemented on September 19, 1962, The Ramona Gas Authority (Applicant) filed in Docket No. CP63–33 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Cities Service Gas Company (Cities Service) to establish physical connection of its existing transmission facilities with the proposed facilities of and to sell and deliver natural gas to Applicant for resale and distribution in the Town of Ramona, Oklahoma, all as more fully set forth in the application, as supplemented.

Applicant will construct and operate a distribution system in Ramona and a transmission lateral connecting the proposed distribution system with the transmission facilities of Cities Service. Applicant estimates that approximately ten customers will be served from the transmission lateral.

Applicant's estimated third year peak day and annual natural gas requirements are 620 Mcf and 37,075 Mcf, respectively.

The total estimated cost of all proposed facilities aggregates $141,000, which cost will be financed by a loan from the Housing and Home Finance Agency.

On October 25, 1962, Cities Service filed an answer to the subject application stating that it has no objection to the requested Commission order.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on November 24, 1962 (27 FR 11569). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) Applicant, The Ramona Gas Authority, is a public trust organized under the laws of the State of Oklahoma and is legally empowered to sell and distribute natural gas in the Town of Ramona.

(3) It is necessary and desirable in the public interest that Cities Service be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 620 Mcf of natural gas per day to Applicant, as set forth in the application, as supplemented, and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Cities Service within one year from the date of issuance of this order.

(5) The requirement that Cities Service serve Applicant, as proposed, will not place any undue burden upon Cities Service nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Cities Service Gas Company be and it is hereby directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 620 Mcf of natural gas per day to Applicant, all as hereinbefore described and as set forth in the application, as supplemented.

(B) Applicant shall be prepared to receive natural gas from Cities Service within one year from the date of issuance of this order.

(C) Cities Service shall report to the Commission in writing the date of commencement of service to Applicant.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP60-64

ORDER DENYING APPLICATION FOR REHEARING AND RECONSIDERATION

(Issued January 14, 1963)*

On December 19, 1962, Tennessee Gas Transmission Company (Tennessee), filed an application for rehearing and reconsideration of our order issued November 20, 1962, 28 FPC 843, denying its motion to amend the order granting it a certificate, issued on June 23, 1960, 23 FPC 846. The certificate authorized Tennessee to construct and operate a pipeline to a platform located at Block 16, East Cameron Area, Offshore Louisiana. The facilities would be utilized to transport natural gas produced from reserves underlying leases owned by Tennessee in adjoining Blocks 16, 17 and 24 to its main transmission system. Tennessee seeks to amend its certificate by having Blocks 16 and 24 deleted from within the scope of its certificate. For the reasons set forth herein, the application for rehearing fails to present sufficient reasons requiring any change in the action we have taken and accordingly it is denied.

As earlier set forth in its motion to amend, Tennessee in its application for rehearing contends that Blocks 16 and 24 are not productive of natural gas and therefore the Commission should amend the certificate as requested, or alternatively, find that no amendment is necessary. The denial of the motion was predicated upon our conclusion that geological data submitted in evidence in the instant case (See Exhibit H attached to the Application), as confirmed particularly with respect to Block 16 in proceedings upon the applications in *Tenneco Corporation, et al.*, Docket No. CI61-1272, *et al.*, (See Exhibit No. 5 and related testimony), shows that these Blocks are presently productive of natural gas being taken into Tennessee's system. Tennessee's contention that the Blocks are not productive of natural gas is at odds with this documentary and the oral evidence presented in the CI61-1272, *et al.*, proceeding.

In support of its position, Tennessee now states that it determined together with the Tenneco Corporation "just prior" to the filing of amended applications in Docket No. CI61-1272, *et al.*, on February 8, 1961, that only eleven of the fifteen "oil" leases listed in Exhibit No. 5 as producing associated gas were ac-

tually producing such gas. We are advised for the first time that Block 16 was not considered productive as a result of this private determination, even though the record evidence is to the contrary. (Block 24 was omitted entirely, erroneously we believe, from the list of on-system leases in Exhibit No. 5). Although Tennessee fails to state where in the evidentiary record or the pleadings it had disclosed the elimination of Block 16 from among its productive leases, it nevertheless relies upon this determination, reached with its affiliate, as providing a basis for arriving at a conclusion contrary to the evidence of record. It is elementary, of course, that our findings and conclusions must be supported by evidence presented in the formal record of proceedings before us. If changes in circumstances required a modification in Exhibit No. 5, such changes could, and should, have been developed through the submittal of appropriate evidence or by revision of Exhibit No. 5.

Tennessee also urges that our settlement order of August 28, 1962, disposing of the applications in Docket No. CI61–1272, *et al.*, provides authority for abandoning its leases in Blocks 16 and 24. It asserts that ordering paragraph (F) (ii) [1] recognized the transfer of "other properties" in addition to leases. Tennessee construes this to mean "oil properties and nonproductive or unclassified properties." While this paragraph comprehended properties of that character, among other properties (See Docket No. CI61–1272, *et al.*, Exhibit No. 4, General Conveyance), it did not recognize the transfer of any oil leases producing associated gas which, according to the evidence, is produced from Block 16. Therefore, it seems clear that our order granted no more than was expressly requested by Tennessee, i.e., the abandonment of eleven "oil" leases producing associated gas—not all fifteen listed in Exhibit No. 5.

Lastly, in support of the proposition that the Commission is not empowered to require a natural gas pipeline company to obtain abandonment permission, pursuant to Section 7(b), prior to the transfer of gas leases, Tennessee puts misplaced reliance upon the Commission's legislative proposal made to Congress that Section 7(b) be amended.[2] This proposed legislation is an outgrowth of *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, which involved gas leases "underdeveloped and not connected with any pipe-line system." (*Id.* at 500). By contrast, the leases covering Blocks 16 and 24, according to the evidence presented by Tennessee, are productive of natural gas and attached to Tennessee's pipeline system.

Significantly, a new well was recently completed on November 8, 1962, on acreage owned by Tennessee in Block 16 at the time we issued the certificate herein, which has been found to be productive of natural gas. This new well was drilled on Block 16 acreage which was a part of the acreage described in the certificate application herein as having natural gas reserves sufficient to warrant investment in, and construction of, Tennessee's gathering pipeline to Block 16. Tenneco now proposes to sell this gas, after receipt of certificate authorization, to Tennessee. See *Tenneco Corporation*, Docket No. CI63–634, filed on November 15, 1962. This newly productive well is, of course, confirmatory of Ten-

[1] Paragraph (F) (ii) states the following:

Tennessee shall file, within thirty days from the date of this order granting certificates, journal entries reflecting the transfer to Tenneco of the off-system gas leases, the eleven oil-casinghead gas leases, related facilities and other properties, excluding the on-system gas leases reconveyed by Tenneco to Tennessee.

[2] This proposal is as follows:

11. Alienation of gas reserves—amend Section 7(b) to require Commission approval for the transfer by an interstate natural gas pipeline company of natural gas reserves where such reserves have constituted part of the basis for issuance of certificates of public convenience and necessity. [See the Federal Power Commission's 41st Annual Report, issued January 1962, Page 3.]

nessee's original estimates of natural gas reserves which formed the basis for the issuance of the instant certificate "to attach * * * natural gas system reserves owned by Applicant * * * underlying approximately 8,500 acres under lease to Applicant in Blocks 16, 17 and 24 * * * ." The fact that the productive area has now been further developed to produce additional gas, strengthens our conclusion that Tennessee's and Tenneco's undisclosed change in the productive status of Block 16 was improper and incorrect. In these circumstances, which are quite different from those in *Panhandle*, it is incumbent upon us to determine whether it is in the public interest to permit leases, acquired, developed (at least partially) and attached by a natural gas pipeline company to its system, to be abandoned subsequently by transferring them to an affiliated producing company which will sell the gas produced from such leases back to the pipeline.

If the evidence presented by Tennessee and utilized by us as a basis for our conclusion is now believed by Tennessee to be out of harmony with current geological developments in the region under discussion, it is free, of course, to present additional evidence on such developments in subsequent proceedings. In fact the type of evidence which would be required to enable us to determine whether or not the transfer of the leases in Blocks 16 and 24 would be in the public interest is outlined in detail in our order denying the motion to amend. Accordingly, we will deny the present application for rehearing without prejudice to the filing of an application by Tennessee pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon these leases.

The Commission finds:

The application filed December 19, 1962, by Tenessee, requesting rehearing and reconsideration of our order of November 20, 1962, in the above-entitled proceeding, presents no new facts or legal considerations which were not fully considered by the Commission prior to the issuance herein of these orders, or which having been now considered, warrant any change in, modification of, or rehearing with respect to the said order.

The Commission orders:

Tennessee's application for rehearing and reconsideration of the Commission's order of November 20, 1962, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP63-27

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 14, 1963)

On July 26, 1962, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP63-27 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the 12-month period commencing September 1, 1962, and the operation of measuring and regulating stations and appurtenant facilities necessary for the establishment of new and additional delivery points for the sale and delivery of natural gas to existing utility customers for resale in the vicinity of Applicant's pipeline system, all as more fully set forth in the application.

The purpose of this "budget-type" application is to enable Applicant to act with reasonable dispatch in the installation of delivery points which are routine in nature but which otherwise might require the filing and processing of a separate certificate application for each such delivery point.

The total cost of all projects for which authorization is sought herein will not exceed a maximum of $100,000, with no single project to exceed a cost of $15,000.

Deliveries through the subject delivery points will be made under Applicant's filed FPC Gas Tariff.

Pursuant to due notice, a public hearing was held in Washington, D. C., on January 3, 1962, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Texas corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of March 30, 1949, in Docket No. G–859 (8 FPC 228).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities for the establishment of new and additional delivery points for the sale and delivery of natural gas to existing utility customers of Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization hereinafter granted, a statement under oath showing by project: (a) a description of said project or projects, (b) the location of said facilities, (c) actual final costs, (d) name of customer served, (e) estimated annual and peak day deliveries, and (f) use to which the gas is to be put.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period commencing on the date on which this order issues, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $100,000, with no single project to exceed a cost of $15,000.

(8) The facilities hereinafter authorized should be used only for service to Applicant's existing utility customers within existing certificated delivery authorization limits, providing that such customers have the necessary local and state authorizations.

(9) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record

and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Texas Gas Transmission Corporation to construct during the 12-month period commencing on the date on which this order issues the proposed facilities hereinbefore described, all as more fully described in the application in this proceeding, and to operate such facilities only to serve existing utility customers within existing certificated delivery limitations, providing that such customers have the necessary local and state authorizations.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit within 60 days after the expiration of the authorization hereinbefore granted, a statement under oath showing by projects: (a) a description of said project or projects, (b) the location of said facilities, (c) actual final costs, (d) name of customer served, (e) estimated annual and peak day deliveries, and (f) use to which the gas is to be put.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the 12-month period commencing on the date on which this order issues, and the total expenditures for facilities to be constructed hereunder are hereby limited to a maximum of $100,000, with no single project to exceed a cost of $15,000.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CENTRAL MAINE POWER COMPANY

ORDER APPROVING AND DIRECTING DISPOSITION OF AMOUNTS CLASSIFIABLE IN ACCOUNT 114, ELECTRIC PLANT ACQUISITION ADJUSTMENTS

(Issued January 15, 1963)

Central Maine Power Company (Central Maine), Augusta, Maine, by letter of June 15, 1962, requested authorization which would result in the accounting disposition of a net amount of $3,037,983.60 classifiable in its Account 114, Electric Plant Acquisition Adjustments, as of December 31, 1961, through annual charges of $303,800[1] to its Account 425, Miscellaneous Amortization, over a period terminating December 31, 1971.[2] It is composed of the debit amount of $4,562,639.05 classifiable in Account 114 and the credit amount of $1,524,655.45 classifiable in Account 115, Accumulated Provision for Amortization of Acquisition Adjustments.

The amount of $3,037,983.60 results from reclassification and original cost studies of electric plant as of July 1, 1952, which Central Maine filed with this Commission on July 1, 1957; recorded book adjustments of Central Maine for the period July 1, 1952, through December 31, 1961; and additional adjustments

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[1] Represents an approximate annual amortization rounded to the nearest $100.

[2] Account 114, Electric Plant Acquisition Adjustments provides: "* * * the amounts recorded in this account with respect to each property acquisition shall be amortized, or otherwise disposed of, as the Commission may approve or direct."

proposed by this Commission's staff following a field examination of Central Maine's accounts, books, records, and other data undertaken jointly with the staff of the Maine Public Utilities Commission. As of July 1, 1952, Central Maine had reclassified a total of $2,527,729.51 to its Account 114.[3] The Company's recorded additions to December 31, 1961, total $512,438.26. The proposed staff adjustment, concurred in by Central Maine's representatives, and the Maine Public Utility Commission, would classify an additional amount of $1,522,471.28 to Central Maine's Account 114 as of December 31, 1961, for a total of $4,562,639.05 as of that date. The additional amount of $1,522,471.28 arises as the result of excesses of acquisition cost over staff recommended original cost of three developments known as the West Buxton, Bonny Eagle and North Gorham plants acquired from Cumberland County Power and Light Company in 1942. In accordance with the staff proposal, Central Maine will effect this reclassification of $1,522,471.28 by a transfer from its Account 101, Electric Plant in Service.

In disposing of the foregoing amounts classifiable in Account 114, Central Maine proposes to reclassify the amount of $774,655.45 to its Account 115, Accumulated Provision For Amortization of Electric Plant Acquisition Adjustments, from Account 108, Accumulated Provision for Depreciation of Electric Plant in Service; and to amortize the amount of $3,037,983.60 by annual charges of $303,800 to Account 425, Miscellaneous Amortization, with concurrent credits to Account 115 over the period commencing 1962 and ending not later than December 31, 1971.

At various times prior to 1962, Central Maine through charges to Account 403, Depreciation Expense, and concurrent credits to Account 108, Accumulated Provision for Depreciation of Electric Plant in Service, made annual provisions with respect to amounts classified in its Accounts 101 and 114. As of December 31, 1961, these provisions totaled $774,655.45. As noted above, Central Maine now proposes to transfer this amount from Account 108 to Account 115 as of that date. Also, Central Maine through charges to Account 425, Miscellaneous Amortization, and concurrent credits to Account 115 made annual provisions totaling $750,000 for the years 1957 through 1961. These amounts ($774,655.45 and $750,000) totaling $1,524,655.45 when deducted from the gross amount of $4,562,639.05 classifiable in Account 114 as of December 31, 1961, result in the net amount of $3,037,983.60 which Central Maine proposes to dispose of by charges to Account 425 and concurrent credits to Account 115 during the period commencing 1962 and ending not later than December 31, 1971.

The accounting disposition of all amounts involved in the foregoing adjustments to Central Maine's electric plant accounts are to be accomplished by the following composite journal entry:

Account No.	Title	*Debit*
114	Electric plant acquisition adjustments	$1,522,471.28
108	Accumulated provision for depreciation of electric plant in service	774,655.45
		Credit
101	Electric plant in service	1,522,471.28
115	Accumulated provision for amortization of electric plant acquisition adjustments	774,655.45

The accounting dispositions of the foregoing amounts, as proposed by Central Maine and recommended by this Commission's staff, were agreed to among rep-

[3] Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts for Public Utilities and Licensees effective January 1, 1961.

resentatives of Central Maine, the Maine Public Utilities Commission and this Commission's staff at conferences held May 24 and 25, 1962, at the office of this Commission.

The Commission finds:

(1) The amount of $4,562,639.05 as referred to above is properly classifiable in Account 114, Electric Plant Acquisition Adjustments.

(2) The amount of $774,655.45 as referred to above is properly classifiable in Account 115, Accumulated Provision for Amortization of Electric Plant Acquisition Adjustments. The appropriate total credit balance in Central Maine's Account 115 as of December 31, 1961, is $1,524,655.45.

(3) The net amount of $3,037,983.60 resulting from the classification of the amounts as referred in findings (1) and (2) should be disposed of through annual charges of $303,800 to Account 425, Miscellaneous Amortization, and concurrent credits to Account 115, Accumulated Provision for Amortization of Electric Plant Acquisition Adjustments, commencing in 1962 and ending not later than December 31, 1971.

(4) It is necessary and appropriate for the purposes of the Federal Power Act and the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees to require that Central Maine complete the accounting reclassification and disposition of the foregoing amounts in the manner as hereinafter provided.

The Commission orders:

(A) Central Maine is hereby directed to complete the accounting reclassification and disposition of all amounts referred to in the findings above, in the manner there set forth.

(B) Central Maine shall submit within 60 days from the date of issuance of this order two certified copies of the accounting entries giving effect to the accounting reclassification and dispositions herein directed. On or before January 30 of each year, beginning with the year 1963, Central Maine shall submit two certified copies of the entries reflecting the annual amortization during the preceding year of the unamortized amount classified in Account 114.

(C) Nothing herein contained shall be construed as passing upon the classification of other amounts which may be properly classifiable in Account 114 but which are now included in Central Maine's Account 101, Electric Plant in Service. To the extent that such amounts are hereafter determined to be properly classifiable in Account 114, in accordance with the requirements of the Commission's Uniform System of Accounts, they shall be disposed of as hereafter directed by the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

VILLAGE OF CISNE, ILLINOIS, DOCKET NO. CP63-38

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued January 15, 1963)

On August 8, 1962, as supplemented and amended on October 30, 1962, the Village of Cisne, Illinois (Applicant) filed in Docket No. CP63-38 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Trunkline Gas Company (Trunkline) to establish physical con-

nection of its interstate transportation facilities with those which Applicant proposes to construct, and to sell and deliver to Applicant volumes of natural gas for resale and distribution in the Villages of Cisne and Johnsonville, both in Illinois, all as more fully set forth in the application as supplemented and amended.

The total volumes of gas required to meet the estimated peak day and annual requirements for the first three years of operation are as follows:

Year of operation	Peak day	Requirements (Mcf), annual
1st	300	28,550
2d	400	39,660
3d	580	55,590

Applicant estimates the cost of its project to be $180,000 which will be financed by the sale of gas utility certificates through local subscription.

Applicant, by ordinance and referendum has been authorized to construct, acquire, own and operate a municipal gas utility, and by franchise has been authorized to sell and distribute gas in the Village of Johnsonville.

Trunkline, on November 2, 1962, in its answer to the application as supplemented and amended stated that it has not objection to the issuance of the order requested by Applicant.

Notice of the filing of the application was published in the Federal Register on November 21, 1962 (27 F.R. 11478). No petition to intervene, protest or request for hearing has been received.

The Commission finds:

(1) Applicant, the Village of Cisne, Illinois, is a municipal corporation organized and existing under the laws of the State of Illinois and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in the Villages of Cisne and Johnsonville, Illinois.

(2) Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G–882 (8 FPC 250).

(3) It is necessary and desirable in the public interest to direct Trunkline Gas Company to establish physical connection of its transmission facilities with the facilities proposed to be constructed by Applicant as hereinbefore described, all as more fully described in the application in this proceeding, as supplemented and amended, and to sell and deliver to Applicant up to 580 Mcf of natural gas per day for resale and distribution in the Village of Cisne and Johnsonville, Illinois as hereinafter ordered.

(4) Applicant should be prepared to receive natural gas from Trunkline Gas Company within nine months from the date on which this order issues.

The Commission orders:

(A) Trunkline Gas Company be and is hereby directed to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant as hereinbefore described, all as more fully described in the application in this proceeding, as supplemented and amended, together with such metering, regulating, and appurtenant facilities as may be required therefor, and to sell and deliver up to 580 Mcf of natural gas per day to Applicant pursuant to Trunkline Gas Company's appropriate rate schedules on file with the Commission.

(B) Trunkline Gas Company shall report to the Commission the date of commencement of service to Applicant within ten days thereof.

(C) Applicant shall be prepared to take natural gas as proposed herein within nine months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

H. L. HUNT, ET AL., DOCKET NO. RI62-467; HASSIE HUNT TRUST, DOCKET NO. RI62-468; HASSIE HUNT TRUST (OPERATOR), ET AL., DOCKET NO. RI62-469; WILLIAM E. McCOMMONS, D/B/A McCOMMONS EXPLORATION COMPANY, ET AL., DOCKET NO. RI62-476; PLACID OIL COMPANY (OPERATOR), ET AL., DOCKET NO. RI62-477; HUNT OIL COMPANY, DOCKET NO. RI62-523.

ORDER DENYING APPLICATION FOR REHEARING

(Issued January 15, 1963)

On December 17 and December 31, 1962, Hunt Oil Company, Hassie Hunt Trust and Placid Oil Company (all here referred to as "Hunt") filed Applications for Rehearing of our Opinion No. 369, issued on November 30, 1962, 28 FPC 897, in which we granted a staff motion to dismiss on the ground that respondents had failed to sustain their burden of proof under Section 4(e) that proposed increased rates are just and reasonable.

The major reasons advanced on behalf of the present application are those previously urged by the various Hunt entities during the course of these proceedings. No new grounds have been advanced which could serve as the basis for a rehearing.

Hunt contends that it was not sufficient for Opinion 369 to hold that respondents failed to meet their burden of showing that the proposed increased rate is just and reasonable. Rather, Hunt says, we must find that the rate is unjust and unreasonable, and therefore unlawful. Section 4(e) places the burden of proof that an increased rate is just and reasonable upon the natural-gas company. Our finding that this burden has not been met is all that the statute requires.

Hunt urges that no guidelines were available to it. However, the Hunt presentation was not only in conflict with the guiding standards of our *Phillips* Opinion No. 338, 24 FPC 537, issued two years before these proceedings as Opinion No. 369 points out, but it was inconsistent with a reasonable allocation of costs as between oil and gas.

Hunt indicates that the proceedings in Docket No. G-9065 were remanded to the examiner by our Opinion No. 365, 28 FPC 623, for the "same reasons" that we are dismissing this proceeding. However, we remanded Docket No. G-9065 because there the hearings had concluded before the issuance of our *Phillips* Opinion No. 338 and we wished to make certain that the respondents in G-9065 had available to them the guidance provided by Opinion No. 338. No such situation is present here where the proceedings did not begin until two years after the issuance of Opinion No. 338. The triggering effect of the proposed increased rates upon the favored-nation clauses of other producers is also a factor here.

Hunt suggests that various pieces of its evidence constituted a *prima facie* case upon a motion to dismiss and so must be accepted in the absence of specific rebuttal. However, as we pointed out in Opinion No. 369 Hunt's evidence was

deficient and did not make out a *prima facie* case in light of Hunt's statutory burden of proof. The fact that the Commission had only Hunt's evidence to consider certainly did not lessen Hunt's burden of proof.

The suggestion that certain of Hunt's presentations were in conformity with the examiners decision in Docket No. G–9065 must be viewed in light of the fact that we did not accept that decision, and that we found the principles used by Hunt to conflict with a reasonable and proper cost of service presentation.

Hunt again urges that it was proper for it to use sales volumes rather than production volumes for its cost of service presentation. However, as pointed out in Opinion No. 369, the use of tailgate sales volumes rather than wellhead production volumes produces distortions. An allocation based exclusively on sales volumes could result in the inclusion of liquid costs in the final determination of gas sales cost. Wellhead production volumes (less flared or wasted gas or liquids) were used initially in *Phillips* Opinion No. 338, *supra*, (with subsequent volumetric and Btu allocation methods) to allocate to the cost of liquids those gas production costs primarily attributable to liquid production, *e.g.*, gas recycling in gas condensate reservoirs. The use of sales volumes also may result in the inclusion of processing and other plant costs in the relative cost allocation although they relate only to sales volumes for the gas processed rather than production volumes.

In *Phillips* Opinion No. 338 both production and sales volumes were available, but it was production volumes that were used for allocation purposes in order to allocate production costs initially between lease liquids and raw gas, while production and sales volumes were subsequently used in the allocation of all processed gas joint costs between plant liquids, etc., and gas sales volumes. Similarly, it is not possible accurately to appraise the offsetting effect of including cycling and gasoline plant investment and operating expenses in the oil leg (an inclusion which is improper in any event, these not being production costs) when only "conglomerate costs" are available, for in the absence of production volume figures, that is the only kind of cost available.

Likewise, Hunt's claimed "segregation and functionalization" of cycling and gasoline costs runs up against the fact that in the absence of production volumes it is not possible to know how to make accurate and appropriate allocations of such expense as between gas and oil—we do not know how much gas and how much oil was produced and how much gas was delivered for processing, and to what extent the figures represent items beyond the lease or have excluded volumes that were returned to the lease, etc.

We suggested in Opinion No. 369 that other major producers use production volumes and that Hunt too could make them available, citing tax and royalty records as one possible source. Even if Hunt's tax and royalty payments are based on sales revenues, Hunt should be able to obtain production volumes from its own records or from other sources, just as all other major producers do, and as Hunt itself has done in the South Louisiana area rate proceeding, AR61–2.

The Commission, in *Phillips* Opinion No. 338, based on its expert judgment and a reasoned set of factors, concluded that an economic factor of four to one was appropriate for the allocation of exploration costs. It is not sufficient for Hunt to take this same set of factors and substitute its own unsupported conclusion that an economic factor of three to one should be used without an affirmative showing that the Hunt conclusion is appropriate.

A major function of a proper cost of service method is to allocate costs accurately so far as possible between gas and liquids. While this may often require

judgment and approximation, leading us to approve a reasonable range of flexibility, this does not extend to the point of approving allocations which are inaccurate on their face. For this reason Opinion No. 369 holds it impermissible for Hunt to have either included all of its gas condensate properties in its gas leg, thereby assigning too high a proportion of liquid, or, to exclude all condensate properties where its gas only properties are too few in number and volume to permit a reasonable allocation. We require only that some reasonable formula be used, without trying to specify an arbitrary figure.

Hunt again contends that physical, rather than economic principles of allocation should be used. This contention was adequately dealt with in Opinion No. 369. Similarly, the Hunt applications for rehearing devote time to rearguing at length their contentions as to the allocation of general and administrative expense, the relevance of the principles set forth in the Commission's *CATCO* Opinion No. 351, 27 FPC 96, the need to show an appropriate rate design despite an overall revenue deficiency, the treatment of cash for lease plays and the determination of rate of return. Since these matters were dealt with in detail in Opinion No. 369 and as Hunt does not offer any intrinsically new argument on these points, we feel that they have been adequately disposed of by our discussion in Opinion No. 369.

The Commission orders:

For the reasons set forth above, the Applications for Rehearing are hereby denied.

Commissioners Ross and Morgan *dissenting* for the reasons set forth in Commissioner Ross' dissenting statement accompanying Opinion No. 369 (28 FPC 897; 907).

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

THE CITY OF JASONVILLE, INDIANA, DOCKET NO. CP63–71

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued January 15, 1963)

On September 20, 1962, The City of Jasonville, Indiana (Applicant), filed in Docket No. CP63–71 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Texas Gas Transmission Corporation (Texas Gas) to establish physical connection of its transmission facilities with the proposed facilities of and to sell natural gas to Applicant for resale and distribution in Jasonville and environs, including the Coalmont area, all as more fully set forth in the application.

Applicant proposes to construct and operate two lateral pipelines extending from two points of connection with Texas Gas' transmission line to town border stations in Jasonville and Coalmont. Applicant will also construct the necessary distribution facilities to provide the proposed service.

Applicant's estimated third year peak day and annual natural gas requirements are 742 Mcf and 79,632 Mcf, respectively,

The total estimated cost of transmission and distribution facilities for the project is $389,000, which cost will be financed by the issuance of gas revenue bonds.

On October 23, 1962, Texas Gas filed an answer to the subject application stating that it had no objection to rendering the requested service provided, among other things, that Applicant executes a service agreement with Texas

Gas within a specified time after the issuance of any order directing the requested service.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on December 5, 1962 (27 F.R. 12009). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1949, in Docket No. G–859 (8 FPC 190).

(2) Applicant, The City of Jasonville, Indiana, is a municipal corporation incorporated under the laws of the State of Indiana and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in The City of Jasonville.

(3) It is necessary and desirable in the public interest that Texas Gas be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 742 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive gas from Texas Gas, as proposed, within one year from the date on which this order issues and upon the execution of a service agreement between Applicant and Texas Gas in accordance with the Commission's Regulations under the Natural Gas Act.

(5) The requirement that Texas Gas serve Applicant, as proposed, will not place any undue burden upon Texas Gas nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Texas Gas Transmission Corporation be and it is hereby directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 742 Mcf of natural gas per day to Applicant, all as hereinbefore described and as set forth in the application.

(B) Texas Gas shall report to the Commission in writing the date of commencement of service to Applicant.

(C) This order is conditioned upon Applicant being prepared to receive natural gas from Texas Gas, as proposed, within one year from the date on which this order issues and upon the execution of a service agreement between Applicant and Texas Gas in accordance with the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY AND CITY OF EVERETT, WASHINGTON, PROJECT NO. 2157

ORDER APPROVING EXHIBIT L DRAWINGS

(Issued January 15, 1963)

On June 22, 1962, Public Utility District No. 1 of Snohomish County, Washington, and the City of Everett, Washington, joint licensees for Project No.

2157. [license issued, 25 FPC 1160], filed for Commission approval Exhibit L drawings for the North and South Dams on Lake Chaplain reservoir to show those project structures of the Sultan River project as constructed.

The drawings show that the North and South Dams were completed in 1943, are 25 and 50 feet in height, respectively, and are earth-fill structures with crest elevation at 747.56 feet. Normal water surface elevation is shown as 739.56 feet.

According to a Commission staff inspection of the dam structures, the structures are sound and no leakage was observed. The project structures were also checked by the staff for stability and were found to be well within the limits of safety.

The Commission finds:

The following described Exhibit L drawings for the North and South Dams of the Sultan River project conform to the Commission's rules and regulations and should be approved as part of the license for the project:

Exhibit L, Sheet 17 (FPC No. 2157 entitled "Lake Chaplain Storage Works, Vicinity Map, General Map of Reservoir and Dams, Reservoir Area and Capacity Curves;" Sheet 18 (FPC No. 2157–48) entitled "Lake Chaplain Storage Works, South Dam, Detail Topography and Design Details;" Sheet 19 (FPC No. 2157–49) entitled "Lake Chaplain Storage Works, North Dam, Detail Topography and Design Details;" and Sheet 20 (FPC No. 2157–50) entitled "Lake Chaplain Storage Works, Spillway and Minor Structures."

The Commission orders:

The Exhibit L drawings described in the above findings are hereby approved as part of the license for Project No. 2157.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP63–48

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 15, 1963)

On August 28, 1962, as supplemented on September 20, 1962, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP63–48 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of certain pipeline facilities which have constructed pursuant to Section 157.22 of the Commission's Regulations under the Natural Gas Act, all as more fully set forth in the application as supplemented.

Spring flooding has caused the main channel of the Yalobusha River to move approximately 160 feet west of the previously established channel, where it is crossed by Applicant's Kinder-Portland Line in Grenada County, Mississippi, at Main Line Valve 846 plus 0.9 miles. The submerged river crossing consists of a single 30-inch line approximately 800 feet in length. As a result of the shifting of the river channel, approximately 50 feet of the pipeline approach to the river crossing has been undercut by river currents to an average depth of 5 feet. This 50-foot section of pipeline, which had previously been buried in the ground to a depth of from 3 to 7 feet, is now suspended in the water and is moving with the river currents. It will be impractical to attempt to lower the original pipeline crossing until such time as the additional crossing

is placed in service because, for safety purposes, the flow of gas through the original line will have to be terminated until the work is completed. Therefore, in order to continue uninterrupted deliveries of gas through the Kinder-Portland Line, Applicant seeks authorization to operate an additional submerged pipeline crossing of the Yalobusha River.

The additional submerged crossing of the Yalobusha River is located approximately 100 feet downstream from the original crossing and consists of a single 30-inch submerged pipeline approximately 1,100 feet in length plus the necessary appurtenances thereto.

After the additional line is placed in service, Applicant will lower the original line, and thereafter Applicant will utilize both river crossings. The additional facilities will not increase Applicant's over-all system capacity.

The total cost for the new facilities is estimated to be $219,000, to be financed from general funds or revolving credit.

Pursuant to due notice, a public hearing was held in Washington, D. C., on January 3, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of July 15, 1947, in Docket No. G–910 (6 FPC 777).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the continued operation thereof by Applicant is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The continued operation of the subject facilities by Applicant is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Tennessee Gas Transmission Company, to continue operation of the subject facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(4), and (e) of Section 157.20 of such Regulations.

UNITED FUEL GAS COMPANY, AMERE GAS UTILITIES COMPANY, ATLANTIC SEABOARD CORPORATION, DOCKET NO. CP61-107

OPINION AND ORDER SETTING ASIDE INITIAL DECISION OF PRESIDING EXAMINER, APPROVING CONSOLIDATION OF NATURAL GAS FACILITIES, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND DIRECTING REVISED FILINGS

(Issued January 16, 1963)*

Syllabus

1. Evidence here precludes finding that transfer of Boldman Compressor Station will constitute grant of undue preference. P. 93.
2. Imposition on Atlantic of costs of ownership of Boldman constitutes undue discrimination; Commission *concludes* public convenience and necessity requires transfer thereof to United. P. 94.
3. Merger of Amere into United will benefit utility customers and public generally by providing more efficient and economical operation. P. 95–96.
4. Transfer of Atlantic's KA–20 line to United will remedy inequities in service rendered Atlantic. P. 96–97.
5. Merger herein approved will resolve long-standing conflict between State and Federal Regulation thereby advancing one of fundamental purposes of the Natural Gas Act. P. 97.
6. Benefits realized by the public amply outweigh relatively minor rate adjustments made necessary by transfer of facilities. P. 97.
7. Commission *authorizes* abandonment and *issues* certificate of public convenience and necessity in proceeding arising under Sections 7(b), 7(c) and 7(e) of the Natural Gas Act. P. 98.

John M. Hill, R. K. Talbott, Edward B. Calland, T. A. Jones and *William C. Hart* for United Fuel Gas Company, Amere Gas Utilities Company and Atlantic Seaboard Corporation

Julian De Bruyn Kops and *William E. Herron* for The Dayton Power and Light Company

Phoebe Eppes Gordon and *Michael E. Shea* for Lynchburg Gas Company

Charles S. Rhyne, Herzel H. E. Plaine and *Edward D. Means, Jr.*, for the City of Pittsburgh, Pennsylvania

C. Oscar Berry and *Karl Michelet* for Washington Gas Light Company

James A. Biddison, Jr., for Baltimore Gas & Electric Company

John P. Egan for The Manufacturers Light & Heat Company

Walter E. Bechjord and *Richard H. Rhein* for The Cincinnati Gas & Electric Company and The Union Light, Heat & Power Company

W. F. Laird and *Ralph N. Mahaffey* for The Ohio Fuel Gas Company

James O. Watts, Jr., for Commonwealth Natural Gas Corporation

Herbert E. Squires and *Alan R. Squires* for Pennsylvania Public Utility Commission

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*Designated Commission Opinion No. 377. Initial decision appears on P. 99. Rehearing denied by order issued March 12, 1963, 29 FPC 456.

Robert L. Stewart for Public Service Commission of West Virginia
Agnes Mae Wilson for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

O'CONNOR, *Commissioner:* This proceeding, arising under Sections 7 (b), (c), and (e) of the Natural Gas Act, involves a joint application filed October 5, 1960[1] by United Fuel Gas Company (United), Amere Gas Utilities Company (Amere), and Atlantic Seaboard Corporation (Atlantic), hereinafter jointly referred to as applicants, all subsidiaries of The Columbia Gas System, Inc. (Columbia), seeking the Commission's approval for a consolidation of various jurisdictional natural gas facilities and operations by merger and acquisition. The precise transfers contemplated are set out in detail in the initial decision issued June 6, 1962, *infra.*, pp. 99–100, and reference is made thereto in lieu of a further general review herein. In essence, Atlantic proposes to abandon and sell to United its Boldman Compressor Station in Pike County, Kentucky and 139.5 miles of its KA–20-inch pipeline[2] extending from Boldman to the Virginia-West Virginia border, including two line compressor stations in West Virginia and a short lateral (Line KB) also terminating at the state line. Atlantic also seeks permission to terminate the sale and delivery of natural gas at wholesale to Amere and Zebulon Gas Association, Inc. (Zebulon), companies presently serviced from the portion of the KA–20-inch pipeline proposed to be transferred. Amere requests permission to abandon, by merger into and with United, its transmission facilities and to terminate service to Bluefield Gas Company. United seeks a certificate of public convenience and necessity to purchase and operate the facilities and to render the wholesale services to be abandoned by Atlantic and Amere, to take over the local production now entering the abandoned line, and to acquire Amere's retail facilities and service which are now under the jurisdiction of the Public Service Commission of West Virginia. The only new construction involved in the application is a measuring and regulating station, estimated to cost $49,000, to be erected at the Virginia-West Virginia border and at which United will sell gas to Atlantic in place of its present delivery point at Boldman. Atlantic would thus purchase a portion of its gas supply 140 miles closer to its major market area than at present.[3]

In consideration for the merger of Amere, United will issue to Columbia, as sole stockholder of Amere, against the surrender for cancellation of the outstanding capital stock of Amere, such number of shares of United's capital stock, par value $25 per share, as shall equal in par value the par value of Amere's outstanding capital stock. The capital and earned surplus of Amere will be carried forward as capital and earned surplus of United. United will take up on its books the assets and properties acquired, the related reserves and the liabilities and obligations assumed, at the respective amounts at which they shall be carried on the books of Amere as of the closing date specified in the acquisition contracts. The installment promissory notes of Amere are to remain unchanged except to become the obligation of United. In payment for the proposed acquisition of facilities from Atlantic, United will issue and deliver to Atlantic installment promissory notes in an aggregate principal amount equal to the value of the assets acquired. These notes will be turned over to Columbia in

[1] Supplementary filings were made on December 9, 1960 and February 1, 1961.

[2] Atlantic's total KA–20 system is 420 miles in length and extends to the Maryland-Pennsylvania border.

[3] As of March 31, 1960, approximately 19 percent of the total deliveries by United to Atlantic were made through the subject facilities. The major share of United's deliveries is made at Clendenin, West Virginia into Atlantic's Cobb-Rockville pipeline.

prepayment of an equal principal amount of installment promissory notes of Atlantic owned by Columbia. In connection therewith Atlantic will select and prepay its notes in such proportion that, after all prepayments have been effected, there will not have been any change in the averages, weighted as to principal amounts, of the interest rates borne by and the maturities of Atlantic's notes owned by Columbia. The installment promissory notes issued by United to Atlantic will bear such interest rates, dates of maturity and other terms as the notes prepaid by Atlantic. The cost of the new measuring and regulating station will be financed by United from operations. No exception to the proposed financing method has been taken by any of the parties to this proceeding.

The initial decision of the presiding examiner, issued June 6, 1962, would deny United the authority to acquire and operate the facilities of Amere and Atlantic, as described, on the ground that the proposal would result in an increase in United's cost of service and, ultimately, serve to increase the gas purchase costs of United's retail distributors located north and west of Boldman, notably The Cincinnati Gas & Electric Company, The Union Light, Heat and Power Company and The Dayton Power and Light Company,[4] while at the same time lowering the net purchased gas costs of Atlantic, thereby providing an apparent "windfall" to Washington Gas Light Company, Baltimore Gas and Electric Company, Commonwealth Natural Gas Corporation, and other Maryland and Virginia customers, all without any change or improvement in service or other corresponding benefits. The named customer companies intervened either for or against the application depending on whether their individual costs would be raised or lowered.[5] The Lynchburg Gas Company, a small wholesale customer of Atlantic, opposed the application although it apparently would receive a slight reduction in purchased gas costs. The Pennsylvania Public Utility Commission and the City of Pittsburgh, Pennsylvania favor approval of the application only on condition that Atlantic reimburse United for the increase in the latter's jurisdictional cost of service resulting from the transfer of the KA–20 facilities, *i.e.*, that United be required to charge a higher rate for gas delivered into Atlantic's KA–20 facilities at the Virginia-West Virginia state line than the rates charged to United's other jurisdictional customers. The Public Service Commission of West Virginia indicated support for the application. The Commission's staff has recommended that the application be approved as presented. The proceeding is now before us on exceptions to the examiner's decision filed by applicants, Washington Gas Light Company, Baltimore Gas and Electric Company, Lynchburg Gas Company, and our staff.

Upon our review we conclude that the application for intercorporate transfer of ownership and operation of the properties as proposed herein is consistent with the requirements of Section 7 of the Natural Gas Act and should be approved by the Commission. The record amply demonstrates that the requested transfer of facilities will eliminate certain existing inequities in the service presently rendered to Atlantic, as hereinafter described, and will result in the more efficient operation of both United's and Atlantic's pipeline systems. Accordingly, we shall set aside the initial decision of the presiding examiner and shall direct consolidation of the various natural gas facilities and operation in conformity with the application submitted and our findings made herein.

[4] These companies are not supplied directly by United but purchase their gas from Kentucky Gas Transmission Corporation or The Ohio Fuel Gas Company, both of which obtain all or a substantial portion of their supply from United.

[5] Although intervention also was granted to The Manufacturers Light and Heat Company and The Ohio Fuel Gas Company, they did not actively participate in the hearing and took no position with respect to the application. Commonwealth Natural Gas Corporation filed a brief supporting transfer of Boldman Station and the KA–20 facilities to United but took no position with respect to the Amere merger.

Boldman Compressor Station

This station, consisting presently of two 2,000 horsepower and two 1,000 horsepower gas engine driven compressor units, was constructed by Atlantic in 1931 at the western terminus of its 20-inch pipeline extending from Pike County, Kentucky to the Maryland-Pennsylvania state line. Historically, Atlantic purchased locally-produced gas from United at low field pressures on the inlet or suction side of the station and moved the gas directly eastward to its markets, bearing the full costs of compression and transportation. Beginning July 31, 1957, a change in operations occurred whereby this high Btu unprocessed gas, after compression by Atlantic, is transferred back to United at the outlet of Boldman and transported westward for processing at United's Kenova extraction plant. In return, Atlantic receives from United an equivalent volume of treated gas plus a sufficient additional quantity to make up for the difference in heat content of the two gases.[6] This exchange gas, pressurized by United prior to delivery, is injected into Atlantic's KA–20-inch line at a point immediately beyond the Boldman Station. The record indicates that the direct connection between Boldman and the KA–20-inch line has not been used since prior to March 31, 1959, nor is it contemplated by the applicants to utilize this connection in the near future.

Applicants, together with Washington and Baltimore, argue that Atlantic's continued operation of Boldman is unique in that it is the only instance where a customer of United is required to provide compression from wellhead pressure, 50–60 psig, to transmission levels at the purchase point. Washington, specifically, has urged that the disparity between the lack of compression on the gas furnished to Atlantic at Boldman and the compression service rendered by United to its other interstate customers is discriminatory and constitutes a violation of Section 4(b) of the Natural Gas Act. Cincinnati and Union, on the other hand, presented evidence tending to show a similar situation near Means, Kentucky where Kentucky Gas Transmission Company, their supplier, is required to provide compression within a short distance of the delivery point on gas delivered to it by Columbia Gulf Transmission Company on United's account. These interveners contend that approval of the Boldman transfer, and the attendant rise in United's cost of service, will serve to compound the alleged existing discrimination against Kentucky Gas. On this basis they request that the Commission not consider the transfer of Boldman until the transfer of certain of the Kentucky Gas facilities to United also is proposed. We agree with the conclusion of the examiner that proof of a discrimination in the situation complained of by Cincinnati and Union would encompass far more than the simple allegations and the evidence set forth in this Section 7 proceeding. Moreover, the existence of other factors involving the gas supplied Kentucky Gas through the Columbia Gulf line, highlighted in the staff brief, together with the fact that the pressure at the Means delivery point (over 900 psig) is in itself higher than at any other point on United's system, precludes our finding, on the evidence here presented, that transfer of the Boldman Station will constitute the grant of an undue preference to Atlantic.

Testimony presented by applicants in the hearing and as expanded upon in Washington's brief reveals that a price differential on the sale of gas by United to Atlantic at Boldman, dating from the initial contractual arrangement in 1931, was eliminated without any compensatory benefit to Atlantic upon the effective-

[6] The described exchange was approved by order issued April 15, 1957, in *United Fuel Gas Co.* and *Atlantic Seaboard Corporation*, Docket No. G–11184, 17 FPC 534, and is filed with the Commission as rate schedule X–7 in United's FPC Gas Tariff, Original Volume No. 2.

ness in 1952 of United's uniform system-wide contract demand rate filed in Docket No. G–1781.[7] Prior thereto the rate charged Atlantic at Boldman was lower than United's rates to its other jurisdictional customers. Even upon the initiation of deliveries in 1950 into Atlantic's Cobb-Rockville pipeline, the rate for deliveries to Atlantic at Boldman Station continued to be at a lower price level.

The application for transfer of Boldman from Atlantic's ownership to United is in accordance with an offer of settlement filed by United on July 7, 1960, and approved by the Commission by order issued September 15, 1960,[8] wherein United agreed to pay $500,000 to Atlantic for the period July 14, 1957 through April 4, 1960 in settlement of the claim by the Commission's staff and customers of Atlantic that Boldman was operated entirely for the benefit of United and that the costs arising therefrom should be borne by United.[9] United and Atlantic further agreed to file the necessary application to effectuate the sale and transfer of the compressor station and, upon authorization, to include the costs associated with ownership and operation of the station in United's cost of service, effective April 5, 1960, for rate-making purposes.

By our orders issued December 29, 1961, 26 FPC 945, February 19, 1962, 27 FPC 369, and March 20, 1962, 27 FPC 538, in Docket Nos. G–20272 and G–20270 we approved, subject to conditions not material herein, settlement agreements providing for costs of service for a test year ending March 31, 1960, to be used by United and Atlantic as the basis for determining rates from and after April 5, 1960. The settlement in Docket No. G–20270 included the cost of Boldman in United's cost of service for a net increase of $93,769. The cost of service approved for Atlantic in Docket No. G–20272, while continuing to treat Boldman as though owned by Atlantic, stipulated a downward adjustment in the amount of $104,787 in the event of approval of the Boldman transfer.

The evidence establishes that Boldman is used to supply compression solely for the benefit of United and not for the transportation of gas by Atlantic. Atlantic receives title to the gas at the suction side of Boldman, retains it only long enough to incur the expense of compression, and then immediately transfers it back to United. The exchange gas supplied by United does not compensate Atlantic for the expense incurred in the compression of the original gas. Boldman is the only instance where a customer of United is required to provide compression for United at the point of delivery. We find that the continued or renewed imposition on Atlantic of the costs of ownership and operation of Boldman in the existing situation constitutes an undue discrimination and that the relief requested not only is appropriate but is necessary under the provisions of the Natural Gas Act. Accordingly, we conclude that the public convenience and necessity requires the transfer of Boldman Compressor Station from Atlantic to United, and the transfer thereof will be so ordered.

Merger of Amere into United

Amere, which is presently supplied by Atlantic from the KA–20-inch pipeline, sells a small quantity of gas at wholesale to Bluefield Gas Company for resale in interstate commerce, but is primarily engaged in the retail distribution of natural gas to 19,000 customers in the six southern counties of West Virginia. Total sales by Amere for the year ending March 31, 1960 were 4,564,104 Mcf. Its natural gas plant consists primarily of distribution facilities located in three

[7] *United Fuel Gas Company*, 11 FPC 779, 12 FPC 252.

[8] *United Fuel Gas Company*, Docket Nos. G–12195, G–16316, G–16815 and G–18420, 24 FPC 467.

[9] This amount was not charged to United's other customers and did not affect the settlement rates.

separate areas contiguous to Atlantic's line. Except for minor gathering facilities, it neither owns nor operates any production or storage facilities. In addition to purchasing gas from Atlantic,[10] Amere also purchases locally produced gas in the Beckley-Mullens area in Wyoming, Raleigh and Kanawha Counties for direct distribution. However, since such gas supply exceeds Amere's requirements in off-peak periods, Atlantic has contracted to absorb the excess quantities. The chief reason advanced by applicants for the proposed merger is that Amere, in the regulation of its retail operations by the West Virginia Public Service Commission, consistently has been unable to recover the full cost of gas purchased from Atlantic. Applicants recount, in their brief, the rate problems arising from differences between the rate requirements of this Commission and those of the State agency. These problems need not be detailed here other than to acknowledge that, for many years, the West Virginia Commission has permitted Amere to include in its cost of service only a portion of the actual rates charged by Atlantic, even though such rates had been approved by this Commission. The West Virginia Commission has based its action on two grounds, the first being that the gas supplied to Amere from the KA-20-inch line is either produced or purchased locally by United and there is no reason why United should not be the direct supplier of Amere and, secondly, their determination since 1953 that Amere should be merged into United. Since Amere would go out of existence under the merger, applicants cite the elimination of the costs of a separate corporation as an additional advantage of the proposal. Applicants also state that the proposed merger will place all the West Virginia retail distribution operations of Columbia's Charleston Group Companies under the sole direction and control of United, thereby resulting in considerable savings of time and effort in the solution of future rate, certificate, and financial procedures. The acquisition contracts contemplate that, upon consummation of the merger, United will conduct the intrastate retail business subject to the regulation of the Public Service Commission of West Virginia and the interstate business subject to the regulation of this Commission. The contracts also provide for United's adoption of Amere's existing interstate and intrastate gas tariffs, the commencement of the wholesale sale by it of natural gas to Bluefield Gas Company, and that United will assume and agree to pay, discharge or perform all obligations of Amere, excluding current payable and accrued taxes.

Although the merger of Amere into United is not one of the previously announced purposes in the corporate realignment program of Columbia in that it does not have the objective of achieving a complete separation of retail and wholesale operations in West Virginia,[11] applicants, together with the Commission's staff and Washington, contend that the proposal is a step in the direction of realignment in that it will achieve simplification in the overall corporate structure through the elimination of one company and the removal of problems related to dual regulation. Washington notes in this regard that the first Ohio Fuel Gas Company realignment proceeding, Docket No. G-9695,[12] recognized the propriety of a merger as here proposed as an initial realignment step.

We find that the proposed merger is in accord with the general effort of Columbia to reduce the number of operating companies serving its customers, thereby simplifying the system's operations by reducing bookkeeping costs and eliminating complex intercompany transactions of the very nature presently engaged in between Atlantic and Amere. Although the record does not fix a

[10] Sales by Atlantic to Amere were 2,949,850 Mcf for the year ending March 31, 1960.

[11] Two other Columbia subsidiaries, The Manufacturers Light and Heat Company and Cumberland and Allegheny Gas Company, not included within the Charleston Group Companies, also sell natural gas at retail in West Virginia.

[12] *Central Kentucky Natural Gas Company, et al.*, 16 FPC 437, 441.

precise dollar figure on the various economies, primarily regulatory and administrative, to be achieved, it does indicate that some savings in costs will result which will ultimately benefit the consuming public. In general, the record shows that there will be no change in applicants' business as now conducted in West Virginia and that the merger and acquisition of facilities will benefit the present utility customers and the public generally by providing a more efficient and economical operation. We conclude, therefore, that the merger of Amere into United is desirable as being in the public interest and should be approved.[12]

Transfer of Portion of Line KA–20 Inch and Line KB

Applicants allege that the merger of Amere into United and the change in ownership of Boldman is "inexorably linked" to the proposed transfer of Atlantic's transmission facilities in Kentucky and southern West Virginia. The factors favoring the transfer were stated as follows:

(1) United has done substantial exploration and development along the KA–20 line in Kentucky and West Virginia and, at the end of 1960, had 180 wells delivering gas into the line above Boldman Station, with an additional 44 wells scheduled to be completed in the next two years.

(2) The transfer of the line to United will reduce from twelve to one the number of United's delivery points to the KA–20 system of Atlantic. The last point at which United now delivers gas into the KA–20-inch line is 72.5 miles east of Boldman and 67 miles from the proposed new delivery point. Since Atlantic will be relieved from accepting widely fluctuating local production, it will be better able to schedule receipts from United and avoid the penalty provisions in United's contract demand tariff.

(3) United is better able to absorb the swings in local production and purchase operations, which Atlantic cannot rely upon to meet the firm requirements of its customers.

(4) As Amere's easternmost market is at the Virginia-West Virginia state line, approval of both the Amere-United merger and the transfer of the KA–20-inch line will enable United to own the complete transmission facilities to its retail markets. Conversely, if Amere is merged into United and United is not granted ownership of the line up to the Virginia border, United will be dependent on Atlantic for certain volumes of gas to supply the markets it will have acquired from Amere. Applicants contend that this would require additional arrangements for the exchange of gas between United and Atlantic and would create "still another rate problem involving greater complexities of intercompany operations than existed."

Although Atlantic's construction, prior to enactment of the Natural Gas Act, of the portion of Line KA–20 inch extending through West Virginia and into Kentucky may have been justified at that time as a necessary measure to secure natural gas service, its continued ownership of the line into the midst of the area of operations of United is inconsistent with the demarcation which has since developed between United and its other customers, each of whom is serviced at the perimeter of United's operations. The record shows that the service thus afforded these customers is preferential as against that provided Atlantic, particularly since the elimination in 1952 of the price differential on the sale of gas at Boldman which had operated as an offsetting factor, having been granted initially in apparent recognition of the fact that Atlantic took

[12] Applicants' policy witness testified that in addition to the present Commission action, approval of the merger would be necessary from the Securities and Exchange Commission and the Internal Revenue Service. The Public Service Commission of West Virginia approved the merger by order dated December 27, 1960, Case No. 5193.

delivery of field pressure gas at a point deep in the heart of United's operations and bore all the costs of compressing the gas and transporting it to market. The evidence further establishes, as with Boldman, that this part of the line currently is being operated by Atlantic in a manner governed almost entirely by the needs and characteristics of United's operations, notably the gathering of its locally produced and purchased gas. The large number of delivery points along the line and the introduction of varying quantities of gas at each point place Atlantic in an unfavorable position, unique among United's customers, wherein it is unable to schedule the receipt of a firm supply of gas for future periods sufficient to meet its customers' contract demands. Atlantic receives no reimbursement for the service it performs for United in accepting the local production along the KA–20-inch line. Each change in the line's operation and in the supply of gas furnished by United has resulted, in retrospect, in a lessening of the quality of service afforded Atlantic. While it is possible that no single alteration, if considered alone, would be adequate to support a finding of discrimination, the present examination reveals that a pattern of inequity has been created in the service rendered to Atlantic which can and should be remedied. The merger of Amere into United, which we herein approve as a measure calculated to advance the public interest, affords additional basis for the transfer of the KA–20-inch line to United. Moreover such merger, by eliminating differences as to rate requirements between the Public Service Commission of West Virginia and the Federal Power Commission, will resolve a long-standing conflict between State and Federal regulation, thereby advancing one of the fundamental purposes of the Natural Gas Act, namely to effectuate a coordinated system of State and Federal regulation, each complementing the other.

Approval of the application will reduce Atlantic's cost of service and will increase United's cost of service. However, it is not possible to transfer facilities without some shift in costs.[14] In our opinion, the benefits to be realized by the public amply outweigh the relatively minor adjustments in rates which will be made necessary thereby. We conclude that insofar as the transfer of Atlantic's KA–20-inch line and related facilities, inclusive of Boldman Compressor Station, situated within Kentucky and West Virginia and the merger of Amere into United are concerned, such acquisition and merger are required by the public convenience and necessity and should be authorized. In accordance with our orders approving the rate settlements in Docket Nos. G–20270 and G–20272 we shall require that the settlement costs of service made a part thereof be revised to reflect the transfers which we approve herein and, as so revised, be tendered for filing, subject to objections by interested parties and to approval by the Commission.

The Commission finds:

(1) United and Amere, West Virginia corporations having their principal places of business in Charleston, West Virginia, are "natural gas companies" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

[14] The exhibits in the record reveal that the combined effect of the acquisition and merger will be to increase United's jurisdictional cost of service by $775,680, or 0.17 cents per Mcf on a present average cost of gas sold at 42.54 cents. The overall financial effect on the Columbia System will be relatively negligible, with the changes in the costs of service being all but offset by commensurate changes in revenues. Moreover, although United's cost of service applicable to its interstate sales will be increased by $775,680, the greatest portion of this increase ($587,667) is due to the Boldman transfer, which transfer we have found is required to eliminate an undue discrimination on Atlantic. The net increase in the jurisdictional cost of service arising from the acquisition and merger exclusive of Boldman, as reflected in the exhibits here submitted, is only $188,013, or 0.04 cents per Mcf.

(2) Atlantic, a Delaware corporation having its principal place of business in Charleston, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(3) The proposed abandonment by Amere upon the merger into and with United is permitted by the public convenience and necessity and permission and approval therefor should be granted as hereinafter ordered.

(4) The facilities proposed to be abandoned by Atlantic, as hereinbefore described and as more fully described in the application herein, are used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(5) The proposed abandonment and sale by Atlantic of the aforesaid facilities is permitted by the public convenience and necessity and permission and approval therefor should be granted as hereinafter ordered.

(6) The facilities proposed to be acquired and operated by United and the facilities proposed to be constructed and operated by United, as hereinbefore described and as more fully described in the application herein, will be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission and the acquisition, construction and operation thereof by United are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(7) The acquisition, construction and operation of the facilities including the services provided as proposed by United are required for the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered.

(8) Applicants are able and willing properly to do the acts, and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(9) The public convenience and necessity requires that the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (d) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act should attach to the issuance of the certificate referred to in paragraph (7) above and to the exercise of the rights granted thereunder and that the time within which installation and acquisition of the facilities authorized by this order should be completed and the said facilities placed in actual operation shall expire on April 1, 1963.

The Commission orders:

(A) Permission for and approval of the abandonment by Amere, upon the merger into and with United, of the facilities hereinbefore described and as more larger fully described in the application and exhibits in this proceeding, are hereby granted to Amere.

(B) Permission for and approval of the abandonment by Atlantic, upon the sale to United of the facilities hereinbefore described and as more fully described in the application and exhibits in this proceeding, are hereby granted to Atlantic.

(C) A certificate of public convenience and necessity is hereby issued authorizing United to acquire, construct and operate the facilities and to perform the services hereinbefore described and as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(D) The general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (d) and (e) of Section 157.20 of the Commission's Regulations Under the Natural Gas Act shall attach to the issuance of the certificate granted in paragraph (C) hereof and to the exercise of the rights hereunder.

(E) United and Atlantic shall tender for filing, subject to objections by interested parties and to approval by the Commission, revisions in the settlement

costs of service approved by our orders of December 29, 1961 and February 19, 1962 in Docket No. G–20272 and our order of March 20, 1962 in Docket No. G–20270 as shall be consistent with the abandonment and acquisition of the facilities ordered in paragraphs (A), (B) and (C) hereof; and upon such approval the presiding examiner shall consider such revisions in costs in his determination of appropriate rate levels for the period commencing with the date of transfer of these facilities, except that the transfer of Boldman Compressor Station shall be held to have been effective as of April 5, 1960, as specified in the settlement agreements.

(F) Upon consummation of the project hereby ordered, United shall file the certificate required by Section 154.65 of the Commission's Regulations Under the Natural Gas Act adopting Amere's FPC Gas Tariff, Second Revised Volume No. 1, together with all effective contracts currently on file with this Commission applicable to the jurisdictional facilities to be acquired by merger and the subsequent wholesale service to be provided to Bluefield Gas Company; United shall also submit a notice of cancellation of its Rate Schedule No. X–7 as contained in its FPC Gas Tariff, Original Volume No. 2 and Amere's Rate Schedule No. X–2 as contained in Amere's FPC Gas Tariff, Original Volume No. 2, such rate schedules then being no longer operative.

(G) Upon consummation of the project hereby ordered, Atlantic shall submit a notice of cancellation of Rate Schedule No. X–11 as contained in its FPC Gas Tariff, Original Volume No. 2, such rate schedule then being no longer operative.

(H) United shall tender for filing, subject to approval of the Commission, a new service agreement with Zebulon Gas Association, Inc. and an adjustment in the existing service agreement with Atlantic reflecting the change in and unification of delivery points and the reduction of Atlantic's contract demand requirements occasioned by the merger of Amere and the transfer to United of the sale to Zebulon Gas Association, Inc.

(I) The time within which the facilities herein authorized shall be acquired, constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations, shall expire on April 1, 1963.

(J) Amere and Atlantic shall advise the Commission of the date of abandonment of the facilities within ten days of the date of such abandonment.

DECISION

UPON A JOINT APPLICATION FOR AUTHORITY UNDER SECTIONS 7(b), 7(c) AND 7(e) OF THE NATURAL GAS ACT

(Issued June 6, 1962)

JENSCH, *Presiding Examiner:* United Fuel Gas Company (United), Amere Gas Utilities Company (Amere) and Atlantic Seaboard Corporation (Seaboard or Atlantic) subsidiaries of The Columbia Gas System, Inc., (Columbia) filed a joint application on October 5, 1960, which was supplemented on December 9, 1960 and also on February 1, 1961, for authority pursuant to Sections 7(b), 7(c) and 7(e) of the Natural Gas Act, as amended, for permission and approval for Seaboard to abandon and to sell to its affiliate United, certain of its natural gas transmission facilities in Kentucky and West Virginia, specifically, to sell a 140-mile portion of, and presently unsegmented, 420-mile [1] long pipeline facility,

[1] As of March 31, 1960, approximately 19% of the total deliveries of gas made by United to its affiliate, Seaboard, are made through this facility. The major portion of deliveries by United to Seaboard is made through the Cobb-Rockville pipeline. Washington Gas Light Co. (Washington) is a principal customer of Seaboard's deliveries, and strongly urges that the Commission permit this intra-corporate transfer and sale of this portion of Seaboard's facilities. The effect of this transfer could reduce Seaboard's cost of operation and gas tariff rates for sale to Washington. Baltimore Gas & Electric Co., also a principal customer adds, without making a commitment to lower rates for its

subject to the juridcition of this Commission, and to terminate the wholesale sale and delivery of natural gas to Amere and Zebulon Gas Association, Inc. (Zebulon). The application also requested permission and approval for Amere to abandon, by merger with and into United, its natural gas transmission facilities and to terminate the wholesale sale and delivery by it of natural gas to Bluefield Gas Company (Bluefield). Relatedly, the application requested a certificate of public convenience and necessity authorizing United to acquire and operate the facilities proposed to be abandoned by Seaboard and Amere, to make wholesale sale and delivery of natural gas to Zebulon and Bluefield, and also authorizing United to construct and operate a measuring and regulating station for the wholesale sale and delivery of natural gas to Seaboard at the Virginia-West Virginia State Line at the terminus of the 20-inch transmission facility proposed to be acquired from Seaboard.

The facilities which Seaboard proposes to abandon and sell and United proposes to acquire and operate are described in the application as follows:

1. Approximately 139.5 miles of 20" gas transmission pipeline (designated herein as Line KA–20") extending in an easterly direction from Boldman Compressor Station, Pike County, Kentucky to the Virginia-West Virginia State Line.

2. Approximately 12.6 miles of 4" gas transmission pipeline (Line KB) extending in a southerly direction from a point of interconnection on Seaboard's Line KA–20" to the Virginia-West Virginia State Line near Peterstown, Monroe County, West Virginia.

3. Boldman Compressor Station situated in Pike County, Kentucky, consisting of two (2) 2,000 horsepower and two (2) 1,000 horsepower gas engine driven compressor units, together with all piping, auxiliary equipment, structures and properties appurtenant thereto and utilized in connection with the operation of Boldman Compressor Station.

4. Huff Creek Compressor Station situated in Wyoming County, West Virginia, consisting of one 880 horsepower and two 800 horsepower gas engine driven compressor units, together with all piping, auxiliary equipment, structures and properties appurtenant thereto and utilized in connection with the operation of Huff Creek Compressor Station.

5. Flat Top Compressor Station situated in Summers County, West Virginia, consisting of four 800 horsepower gas engine driven compressor units, together with all piping, auxiliary equipment, structures and properties appurtenant thereto and utilized in connection with the operation of Flat Top Compressor Station.

Amere proposes to abandon and United proposes to acquire all of Amere's natural gas plant by merger, which plant consists primarily of distribution facilities located in three separate areas contiguous to Seaboard's 20-inch pipeline in West Virginia. The applicants propose no abandonment of the services presently rendered by Amere's existing facilities as a result of the proposed merger, but following such merger, all of Amere's existing services will be continued by United.

The estimated cost of the proposed measuring and regulating station will be $49,000, which United proposes to finance with cash generated from opera-

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service, that the transfer will "inure to the benefit of the ultimate consumer of gas." Other customers affected by this joint application could have increased rates based upon the showing that United's cost of service would be substantially increased if this joint application were granted. To be noted throughout, there is no evidence of operational cost savings to the applicants, and no evidence of any substantial improvements in service; the evidence is certain that there would be a shifting and adding of costs to western customers of United. In addition, the costs to United's retail West Virginia distribution customers would be increased.

tions. United proposes to finance the merger of Amere by issuing such number of shares of United's capital stock as shall equal the par value of Amere's outstanding capital stock. The installment promissory notes of Amere will remain unchanged by virtue of the merger and will become the obligation of United. Further, United proposes to reimburse Seaboard for the assets and properties secured by the issuance of installment promissory notes in an aggregate principal amount equal to the value of the assets acquired. Seaboard will then deliver such notes to its parent, The Columbia Gas System, Inc., as prepayment of an equal amount owed by Seaboard to the parent company. The net book value of these assets was $6,378,896 as of December 31, 1959.

It is the position of applicants that a granting of their proposal would be in the public interest, because the proposed merger of Amere, primarily a retail distribution company, into United will eliminate Amere as a separate corporate entity, presently subject to the jurisdiction of both this Commission (by its sale of gas to Bluefield Gas Company and on occasions to Seaboard) and the West Virginia Public Service Commission. The dollar effect or advantage[2] of such a change could not be measured according to the evidence from applicants. Applicants also state that the proposed merger will place all the Charleston Group Companies' retail distribution operations in West Virginia under the direction and control of a single operating subsidiary, resulting in attendant operating economies, the amount of which, however, could not likewise be described in measures of dollars. The term: "Charlestown Group Companies" is used in order to distinguish other retail operations conducted by Columbia in West Virginia through other subsidiaries, not concerned here, namely: The Manufacturers Light and Heat Company and Cumberland and Allegheny Gas Company. Applicants further claim that the proposed acquisition of transmission facilities by United from Seaboard, will likewise unitize into a single operating subsidiary (United) those facilities which are directly related and utilized in Seaboard's existing wholesale sale to Amere, thereby eliminating the separate ownership of transmission facilities between United's existing retail market and those to be acquired from Amere. United pointed out, however, that Seaboard has other substantial transmission facilities which are not affected by the project set forth in this joint application, in that Seaboard owns a large transmission line extending from Clendenin, West Virginia across West Virginia and Virginia to Rockville, Maryland, and in addition, Seaboard would retain a substantial or the larger portion of the transmission line which is affected by this project.

By order of the Commission of August 21, 1961, the following parties were permitted to intervene: The Dayton Power and Light Company, Lynchburg Gas Company, City of Pittsburgh, Pennsylvania, Washington Gas Light Company (WGL or Washington). Baltimore Gas and Electric Company, The Manufacturers Light and Heat Company,[3] The Ohio Fuel Gas Company,[3] and Commonwealth Natural Gas Corporation.

[2] Washington Gas Light Company was wont to term this change by Columbia in corporate structure as "streamlining", but like United could not assign any dollar advantage to the transaction.

[3] These intervenors are also subsidiaries of The Columbia Gas System, Inc., and affiliates of the applicants. In their separate petitions to intervene, allegations were made that this project would result in some increase in United's jurisdictional cost of service and petitioner(s) ". . . desire to be fully informed in all aspects of this proceeding and to protect its interests." After the Commission granted intervention and after entering their appearances at the call of the case, there was no further activity of record in the case to ". . . protect its interests." Cincinnati adds: "It is perhaps significant that neither Manufacturers nor Ohio Fuel gave any indication of approval of the proposals."

Notices of intervention were filed by the Pennsylvania Public Utility Commission and the Public Service Commission of West Virginia and both were represented by counsel at the hearing.

Each of said customer intervenors obtains its supply of gas from either United or Seaboard, which purchases gas from United, or from both United and Seaboard, with the exception of Cincinnati Gas & Electric Company (Cincinnati) and the Union Light, Heat and Power Company, which latter companies receive their supplies of natural gas from Kentucky Gas Transmission Corporation,[4] which in turn receives its supply of gas from United. Cincinnati is also a major wholesale customer of The Ohio Fuel Gas Company (Ohio Fuel), which in turn also purchases a major portion of its gas from United. The Dayton Power Light Company (Dayton) purchases substantially its entire natural gas supply at wholesale from Ohio Fuel, which company purchases from United a substantial portion of the gas which is sold to Dayton.

Customers of United, such as Cincinnati and Dayton, contended that the granting of the application would result in an increase in United's cost of service, (and this is admitted by United) and, therefore, would ultimately result in increased costs of gas supplied to them. In addition, the Pennsylvania Public Utility Commission and the City of Pittsburgh oppose the applications. Washington, Baltimore, and Commonwealth favored the application but did not stress the lower costs of service to be had by their gas supplier, Atlantic. The West Virginia Public Service Commission, at the outset of the hearing, stated that it supported the application, but after the hearing, and significantly after hearing that rates in West Virginia for United's retail customers would be increased[5] if the application were granted, filed no brief after the conclusion of the proceeding.

The matter was heard, pursuant to due notice, on October 9, 12, November 13 and 14, 1961 and on January 9 and 10, 1962. Thereafter, briefs were filed, the last on April 2, 1962.

As stated, applicants are wholly-owned subsidiaries of The Columbia Gas System, Inc. United is engaged in the sale of gas to approximately 119,000 residential, commercial and industrial customers in the State of West Virginia. It also sells gas for resale in West Virginia. It sells gas in Kentucky at wholesale to intrastate utility customers and sells gas in Ohio to an industrial customer. In addition, United sells gas at wholesale to other utilities for resale in West Virginia, Kentucky, and Ohio. It is also engaged in production, purchase, transmission, underground storage, and distribution of natural gas.

[4] Some of the sales made to Kentucky Gas Transmission Corporation are physically made by deliveries by a southwest gas supplier, Columbia Gulf Transmission Corporation, into facilities owned by Kentucky Gas, and despite the lack of ownership by United of any physical equipment, not even a metering station, the sales and accounting techniques, used for these deliveries, record the sale to Kentucky Gas as made by United Fuel Gas Company, presumably to achieve a better load factor on the take of gas. The lack of ownership of facilities, however, adds to the general complexity of Columbia intracorporate sales to affiliates and separate rates, with one affiliate's costs added to another's. Dayton Power & Light disputes the alleged advantage of United's load factor, since Dayton's gas is funnelled through another Columbia system subsidiary, Ohio Fuel Gas Company, which, by the use of storage fields, already has a high load factor for its takes of gas.

[5] United has retail service in approximately 112 towns in West Virginia. The net effect of a granting of this application for service in that State would be no indicated reduction in service costs to towns served by Amere, and an increase of rates in the 112 towns served by United. The advantages to West Virginia service do not seem clear; it may be that the West Virginia Commission had not recognized the increase to United's customers when it asserted its position in this proceeding. The towns affected would include: Charleston and South Charleston, Huntington, Kenova, McConnell, Mt. Union, Nitro, St. Albans, Silverton, and Williamson.

United produces and purchases natural gas from local fields in West Virginia and Kentucky and also purchases gas in these States from Tennessee Gas Transmission Company. United makes other purchases in southern Louisiana, which are transported by Columbia Gulf Transmission Company, an affiliate. United operates 16 underground storage pools in West Virginia. In summary, as the West Virginia Public Service Commission has described it, United is the main supplier of gas for the entire Columbia system.

Seaboard proposes to transfer approximately 139.5 miles of its 420-mile, KA 20-inch line to United. The entire length of the 420-mile line extends from Boldman, Kentucky, to the Maryland-Pennsylvania State Line. The portion proposed to be sold to United extends from Boldman Compressor Station in Pike County, Kentucky, across the southern portion of West Virginia to the Virginia-West Virginia State Line. Seaboard also owns and operates a 20-inch line extending 262 miles in an easterly direction from Clendenin, West Virginia, to a point near Rockville, Maryland. The 20-inch line and the 26-inch line are connected by a 24-inch line extending from Seaboard's Lost River Compressor Station, a distance of 49 miles in a southerly direction to Seaboard's Bickers Compressor Station in Greene County, Virginia. Seaboard also owns and operates two storage pools, which are connected to its 26-inch pipeline.

Seaboard receives the major portion of its gas supply from United. It also purchases small volumes from producers in West Virginia and Kentucky close to its 20-inch and 26-inch lines, and from Transcontinental Gas Pipe Line Corporation in Virginia and Maryland. In addition, Seaboard purchases from Amere (which is now an affiliate but previously was a subsidiary of Seaboard) locally purchased gas in the Beckley-Mullens area produced in excess of Amere's requirements in that area.

The gas deliveries by United to Seaboard and the operations of Boldman provide for gas entering the suction side of the Boldman Compressor Station.[6] This is gas which has been purchased or locally produced in or around the Boldman area. This gas is compressed and discharged into United's 12-inch line for transportation westward ultimately to United's Beaver Creek Compressor Station. Other gas entering line KA-20-inch near Boldman is gas which has been purchased by United from Kentucky-West Virginia Gas Company. The

[6] The complex character of this gas intake, gas sale, delivery westward and exchange arrangement can be observed from the applicant's policy witness who described the multi-contract procedure as follows:

> Atlantic Seaboard purchases from United Fuel the gas on the suction side, or the injection side of Boldman Compressor Station and exchanges it with United Fuel gas that will come from Beaver Creek Station (which is westward from Boldman), over to Boldman in exchange for that gas, so I would say that the gas belongs to United Fuel once it is delivered back to United Fuel on the outlet side of Boldman Compressor Station. [Parenthesis added.]

It appears that Seaboard compresses gas to move it westward. This gas is treated in a processing plant. When processing operations are not in progress, the gas delivered into Boldman may move immediately eastward, although how often this occurs was not definitely established. United compresses gas at its Beaver Creek Station, and generally, it is this gas from the Beaver Creek Station that is delivered to Seaboard and if traceable (assuming intermediate markets do not absorb it all) ultimately to Washington.

One phase of this transferring of title to gas at Boldman (first from United to Seaboard, then after compression, from Seaboard back to United) is not clear in this record in reference to the various processing procedures: Seaboard purchases gas from United Fuel at Boldman, as indicated, but this gas moves westward where it ultimately is processed, the evidence is that ". . . United Fuel not only doesn't receive any benefit from that . . ." A possible inference may be that some other Columbia subsidiary does benefit from the processing revenues. If United Fuel does not receive any benefit from that processing, and yet adds volumes of gas to Seaboard to compensate for difference in Btu value of gas exchanged, it may be that Seaboard's cost of service could reflect the benefit from the processing operation, to justify the compressing gas costs which are complained of by Washington.

liquifiable hydrocarbons from this latter stream have been extracted by the seller. This gas is transported by United from the vicinity of the Beaver Creek Compressor Station to a point near the discharge side of Boldman through United's 20-inch line.

There has been no showing that the direct connection between Boldman and line KA-20-inch has been used since prior to March 31, 1959, nor is it contemplated by the applicants to utilize this connection in the near future. The only time this connection would be used would be at a time of extreme emergency along Seaboard's 26-inch line from the Cobb Compressor Station to the tie-in between Lost River Compressor Station and Bickers Compressor Station.

While the participants in this proceeding have carefully designated the separate companies in the Columbia system by their respective names, the effect may be, in some instances, to regard the separate entities as if they were unaffiliated organizations. That is, Washington asserts that both the Boldman Compressor Station and the portion of the KA-20-inch line sought to be transferred are really operated for the benefit of United and not for the benefit of Seaboard, and therefore should be transferred to the former. These considerations cannot be separated from a recognition of the manner in which the Columbia system of companies operates. This record indicates, by the references made in the proceeding to the Columbia "blue book", which contains the computations of gas supply requirements and the proposed methods of delivering those supplies, that while all of the Columbia companies may not be entirely or completely operated as a unit in order to efficiently "pool" all of the gas supply on the entire Columbia system in order to supply the various kinds of customer requirements, (whether these occur in Ohio, Pennsylvania, West Virginia, Maryland, Virginia and New York), the record in this case does establish that the supply of gas that comes into United Fuel, as one subsidiary, is a pooled supply of gas in that it goes to all of the customers of United Fuel, which include Ohio Fuel Gas and Manufacturers Light & Heat Company, which are substantial interstate transmission companies, and also Columbia subsidiaries. It appears that the title and ownership of the gas pipeline facilities are immaterial in such operations.[7] It is also important to note in connection with the complex Columbia system that endeavors are being made, without any specific timetable for West Virginia operations, however, to generally separate, into distinct corporate entities, the retail from the transmission operations. Admittedly, that concept of corporate realignment is not proposed in this proceeding. This proposal has been described, more often by Washington, as a "stop-gap" proceeding, as if it were an interim arrangement, but not even United, nor any evidence from any Columbia subsidiary evidence could indicate what the ultimate proposal would be, nor how this proposal would be as a stop-gap. In fact, this proposal being contrary to the general realignment program, if it were to be granted, may constitute a hindrance or a block to further progress in West Virginia. Consistent with the statement made on the record in these proceedings, official notice may be taken of prior proceedings involving previous Columbia's merger proposals. These proceedings also reflect many of the operations which are used by Columbia

[7] In United's brief, the following statement is made without any record references which are given for most assertions in that brief:

> The separate ownership of Atlantic's 20" transmission facilities has, in at least one instance, created substantial difficulties to both United and Atlantic: first, in connection with Atlantic's estimating its gas requirements, and second, in connection with United's providing Atlantic's gas requirements.

This statement in the brief is to be contrasted with the evidence given by United's witness: "These particular problems of operational problems we have been living with, they haven't been impossible . . ."; at another point, United's witness testified: "There is no problem of handling the gas. It could still be handled and as I stated, *there would be no change of operations coincidental with change of ownership.*" [Emphasis added.]

to direct the movement of gas supplies in, and among, its various affiliated companies, according to emergency needs and other requirements of the customers served by the Columbia affiliates. Thus, it may be accepted that, as a general rule, the use of the facilities of any one of the affiliates is guided, in part, by the over-all Columbia System requirements, and relatedly the use of facilities will be modified and changed from time to time by system needs. As a conclusion, the particular use made, in a specific period, of the facilities of any one affiliate cannot be wholly accepted as the definitely established pattern of operation. The changes made, perhaps day to day, or year to year, will reflect different modes of use. The Columbia system operations reflect many illustrations of the varying patterns of operation, some dictated by the developments arising in the course of history, including the shifting sources of gas supply, the reanalyses made of gas content for processing purposes, and the changing needs in different areas served by the Columbia System companies.[3] Due to such changing operations over the course of years, the costs utilized for rate purposes in Columbia System cases are related as accurately as possible to the uses made of the various company facilities. To this extent, the fact that the KA-20-inch pipe line, involved herein is used in a particular period of time for a specific use, among other major uses, for a company not owning the KA-20-inch line, requires a cost analysis to formulate the reasonable rates needed in order to assign the burden of payment according to the use. It does not appear therefore that such an approach for cost analysis for rate purposes necessarily requires transfers of ownership of facilities, when to do so will add to the costs of other customers of the Columbia System companies which are not attached to, nor served from the KA-20-inch line.

While United and the other applicants herein speak generally of the corporate realignment program, and admit that the instant proposal is not consistent with that program, the insistence by Washington that the instant proceeding should be considered as a part of the program, warrants some reference to the precise endeavor undertaken. The principle said to govern the program has been stated as follows:

> The principle used, and which we plan to follow in making further segregations in separating our property between retail and wholesale business—I want to make perfectly clear that this is not the matter of separating distribution from transmissions—but our objective is to segregate our retail business from our wholesale business.
>
> The distribution company should own the laterals or other property, bringing gas to it from the major transmissions system, back to the nearest possible point on that transmission system which will not involve distribution company ownership of lines transporting gas for sale in interstate commerce, or gas for wholesale sale or any major volume of local production or purposes. [See: Central Kentucky Natural Gas Company, G–9689, G–9684 and G–9685, *et al.*, May 21, 1956.]

Specifically respecting the instant proposal, United's principal witness has urged that the application be granted for several reasons, one of which being

[3] To this extent, the reference made by United and Seaboard, and the repeated emphasis by Washington, that Seaboard is historically only a transmission company, cannot be accepted as an absolute prohibition to any change in operations to prevent Seaboard from absorbing its previous subsidiary, but now affiliate, Amere, in order to engage in retail operations, if permitted by the Securities and Exchange Commission, which is continuing its considerations respecting the proper corporate alignment of the Columbia System. Whether the instant proposal meets with the approval of the Securities and Exchange Commission was not even indicated for this record; perhaps, its views should be received before changes in ownership, with no operational necessity therefor, are proposed as herein.

that the West Virginia Public Service Commission has suggested[9] that Amere be merged into United, in view of Amere's complaint to that Commission that Amere was not fully recovering its entire cost of service in the rate proceedings before that State Commission. United's witness added, however, that a merger of Amere into United would not be a complete solution and generally discussed the problems, as follows:

> Actually, careful consideration has been given, from time to time, to the Commission's (West Virginia Commission) recommendations but there were a number of obstacles. First, in integration proceedings before the Securities and Exchange Commission under the Holding Company Act, that Commission ruled that certain subsidiaries of Columbia constituted an integrated system and could be retained by Columbia and certain other companies must be disposed of.
>
> The Commission did not then and has not yet ruled as to the retainability by Columbia of certain companies, including Atlantic[10] and Amere.
>
> Up until December 31, 1953, Amere was a subsidiary of Atlantic, and Atlantic was thereby a sub-holding company. The proposed transfer of ownership of Amere from Atlantic to Columbia was without prejudice to the integration proceedings.
>
> *Secondly, the merger of Amere into United Fuel would not in itself be a complete solution* to the problem being considered by the Public Service Commission of West Virginia because of the intervening facilities owned by Atlantic. Since the markets being served by Amere are now and have always been dependent upon the 20'' line of Atlantic for their gas supply, *Atlantic would have to be compensated for the transportation. This would have created still another rate problem involving greater complexities of inter-company operations than existed.*
>
> Thirdly, the Columbia Gas System has been for several years working on a program of property realignment with the ultimate aim that of realigning the system operations so that all distribution operations in one state would be carried on by an individual company subject only to the regulatory commission in that state, and the interstate operations be carried on by a transmission company subject to the jurisdiction of the Federal Power Commission.
>
> We have been working on that problem in West Virginia. We had hoped to accomplish the combining of the distribution operations of Amere and United as a step in our overall realignment program, but at the present time there are too many unanswered questions to go forward with that phase of realignment programs.
>
> However, in view of the growing problems concerning Amere, Atlantic, Seaboard and United Fuel we are proceeding on the basis of the proposals contained in the application as filed in this proceeding.[11] [Emphasis and parenthesis added.]

[9] The initial reference to a merger was made in 1953; United presented in this record an order of the West Virginia Commission approving, for intrastate purposes, a merger of Amere into United, this order was issued in 1960.

[10] If the Securities and Exchange Commission has not yet ruled on retainability of Seaboard by the Columbia system, the position of Washington is more understandable in its effort to avoid any possible "unaffiliated with Columbia" ownership of Seaboard, of the facilities whose cost of service may affect Washington's purchased gas cost, and thus Washington may hope to place most of the facilities in United's ownership.

[11] United presumably recognizes that the application filed herein is no answer to its problems, and that more difficulties than presently exist may arise if the application is granted, but apparently from some urging, the application was filed to have the present considerations answered one way or another.

United's witness in his references to the Columbia System realignment program has differentiated the instant proceeding from the system endeavor. In the foregoing statement, the witness would not characterize the instant proceeding as in anywise a desired part of the corporate alignment; and thus, while Washington and Baltimore, which stand to gain by lesser costs of gas service,[12] apparently urge that even if there be defects and insufficient public interest considerations to entitle the United project to acceptance, nevertheless urge that the project be accepted as an interim or "stop-gap" arrangement. If United, however, has concluded that with such substantial additions to its interstate cost of service, as well as increase in rates to its retail customers in West Virginia, there will be "greater complexities in inter company operations than existed" the "stop-gap" argument of Washington and Baltimore cannot be accepted and is rejected as contrary to the record.

The complaint by United and Amere that the latter is not receiving, and has not been permitted to receive, its full cost of service in the rate proceedings before the West Virginia Public Service Commission warrants greater analysis than reflected by the efforts of the parties to this proceeding. Throughout the hearing, the contention has been made that that State Commission has refused to recognize the tariff rate prescribed by the Federal Power Commission for Seaboard's rates to Amere, and that the latter's property has hereby been confiscated in violation of the United States Constitution. Compounded with that assertion, is the reference to two proceedings seeking *certiorari* from the United States Supreme Court to convey the impression that that Court, by a denial of the petitions, has permitted the confiscation, and has denied the supremacy of the federal law over State regulation. Such a shocking charge requires a complete analysis of the State Commission and State Court proceedings, as well as those in the United States Supreme Court. The analysis refutes the charge of confiscation, and in addition indicates that United and Amere, with the kindly guidance of the Columbia System control can adopt some "self-help" procedures,[13] by rearranging or realigning their gas supply contract arrangements that will substantially, if not completely, end their claims of confiscation.

The initial order of the West Virginia Commission, as made available by United, but which is also shown in the record of proceedings in the United States Supreme Court, of which official notice has been taken, shows conclusively that the amount of dollar difference, claimed by Amere and the adjustment made by the State Commission, is resultant from the treatment given to a gas supply arrangement between unaffiliated Columbian Carbon, as a seller, and its separate gas supply contracts with Amere and Seaboard. The State Commission asserted that since Amere and Seaboard were affiliates, a single contract could be executed and let deliveries vary according to needs of either such user, but desig-

[12] Significantly, Washington, as a part of its contentions respecting the public interest involved in these proceedings, makes no commitment to pass any reductions or savings on to its consumers.

[13] To the credit of the presentation by brief made by United, Amere and Seaboard, if not to that of the participant intervenors in this proceeding, has been the recognition that United and Amere know that changes can be made to end the complaint of confiscation. United asserts: "Applicant's only recourse is to change the existing framework to comply with orders of West Virginia Commission."

While United does not define the "framework", the order of the West Virginia Commission does by reference to the gas supply contracts. It is to be noted that careful language is used earlier in the United-Amere brief to state: "It is obvious that Amere has done everything possible to resolve the above situation; the only step left is the merger of Amere and United." It may be that Amere cannot do more without Columbia's control being used to make the change, and the "only step" as used in the brief, may not be intended as the only solution. The language is precise; the context, however, may be somewhat confused.

nate Amere as the buyer, in order to achieve a larger volume purchase. The State Commission asserted that this did not seem like a novel procedure for the Columbia System Companies, which already had an arrangement applicable even in West Virginia. This arrangement concerned Manufacturers Light & Heat Company and Cumberland and Allegheny Gas Company. This contract arrangement provided for an exchange schedule of gas deliveries, which if applicable for Amere and Columbian Carbon, would permit Amere and Seaboard to exchange gas from the deliveries made by Columbian Carbon. Such an exchange schedule would thereby lessen Amere's cost, as set forth in the West Virginia Commission's order, in an amount disallowed in Amere's cost of service. The reduction made by the State Commission was made in reference to that gas supply cost, only, and while some averaging of all costs might show less allowance for Seaboard's rates which governed sales to Amere, such averaging was apparently regarded as a confusion of the figures, rather than a consideration of the issue decided by the State Commission. The State order set forth this issue in detail, and invited Amere to present evidence that this supply arrangement was not feasible nor possible, and offered to keep the record open to afford every opportunity to Amere to consider the issue further with the State Commission. Amere's sole response was limited apparently to its own contention, not supported by evidence from Columbian Carbon, that that seller would not contract solely with Amere, and presumably needed Seaboard's financial credit for the large gas supplies involved. It is to be inferred that from the State order, that that Commission concluded that affiliates in the Columbia System could arrange the necessary "paper work" to develop the self-help procedure to avoid confiscation.

Despite that analysis by the State Commission, and its suggestion of a means to lower the costs of service for state users of Amere gas, as well as its offer to leave the record open to consider the matter further, Amere moved on and filed proceedings in the State Court and Supreme Court in order to change the State Commission order. The Amere petition for *certiorari* in the United States Supreme Court was redundant concerning claims of confiscation, and the contentions and citations to cases permitting utilities to recover their costs of service and a fair and reasonable rate of return. There were two petitions for *certiorari;* the second was apparently not even answered by the State authorities according to the record on file, and the Supreme Court decided for both petitions that no substantial federal question was presented. In opposition to the first petition for *certiorari* filed by Amere, the State attorneys, in their brief, specically pointed out that there was not any conflict respecting allowances for Seaboard's Federal Power Commission gas tariffs in Amere's cost of service, and stated:

> The action of . . . Commission did not purport to deny or usurp the jurisdiction of Federal Power Commission to approve tariffs of Atlantic . . . (but did hold) that it was . . . unreasonable (for Amere) to purchase gas from its parent company (Seaboard was then parent to Amere) at high costs when other sources of supply and methods of acquisition were available . . . at substantially less costs. (Parenthesis added.)

In addition, the brief in opposition stated:

> It (Public Service Commission) merely pointed out the abuses of the affiliated relations and how they might be corrected, and that correction must be found or good cause shown . . . The Commission's recommendations, if followed by Amere, would not divert or interfere with the flow of gas in interstate commerce . . . The burden of proof was upon Amere. In transactions between affiliates, the burden of proving reasonableness rests heavily

upon the utility . . . This it failed to do. (Parenthesis added.) [Brief in opposition by Attorney General of West Virginia to Amere's petition for *certiorari*, 347 U.S. 910.]

The "other methods" of acquisition had been described in the State Commission order by reference to a gas cost from Columbian Carbon ranging from 22.5 cents to 24 cents, and the charge made by Seaboard to Amere at 62 cents per Mcf. The State Commission did not believe it reasonable for Amere to pay a cost for gas that could be delivered directly to Amere, rather than adding an affiliate's, or then parent company's cost of service in addition.

This extensive reference has been made to show the principal determination in the State Commission order. By way of a conclusion, in a consideration of many other contentions by Amere, the State Commission added that merger ". . . would seem feasible . . . and thus solve the problems that arise from intercompany sales." It appears that the principal determination was to have gas delivered directly by a gas supplier to Amere. Following the several State and United States Supreme Court proceedings, Amere proceeded with the merger proposal instead, and apparently has not yet acted on the determination respecting gas supply costs and deliveries.[14] Upon the basis of that record, the contentions made in this proceeding concerning confiscation are denied, and rejected as not justified by the evidence, and furthermore this claimed necessity for a merger does not constitute a showing in the public interest to warrant a merger by Amere into United as proposed herein.

The second project involved in this joint application is the proposal to transfer the Boldman Compressor Station from Seaboard's ownership to United. Several reasons are assigned principally by intervenors Washington and Baltimore, one being that in a rate settlement proceeding, a sum of $500,000 was paid (presumably toward the costs of the operation of Boldman) by United to Seaboard, and with that agreement, the participants in an early rate proceeding reached a settlement. This record reflects the insistence by Washington[15] to require United to pay $500,000 to Seaboard for the operation of Boldman. Upon the basis of that compromise and settlement, approved by the Commission, Baltimore urges that all participants herein recognize that the Boldman station should be transferred from Seaboard to United, despite the fact that the settlement statement excluded any commitment to that position, and reserved the rights of rate settlement participants to object to any such proposal. It has been commonly recognized that compromise and settlement dispositions are not evidence of the merit of the positions concluded, and no reason has been shown to disregard that principle of law, even though Baltimore goes to the extent of asserting:

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[14] Perhaps a realignment of gas contracts would be more helpful to Amere than further transfers of ownership of facilities among Columbia subsidiaries; this may be the "framework" for compliance that United and Amere recognize in their brief.

[15] United's policy witness testified:

> They (Washington) have over several years contended that Boldman should be owned by United Fuel. They also said or contended that the 20-inch line of Seaboard is operated for the benefit of United Fuel as a gathering line, and I don't agree with that contention at all . . .

The witness further indicated that this proceeding was at least an endeavor to relieve the constant pressure by Washington on United:

> . . . because all of the gas injected into the 20-inch line at these various points east of Boldman are injected at pressures sufficient to, as we say, buck the pressure out of Boldman, but nevertheless whether it is a fact or whether it isn't *I just suspect that if we don't do something about it, it will just be a problem that we will have in rate cases from here on.* [Emphasis added.]

A possible inference is that United has a problem from these contentions of Washington, and while United does not agree with Washington on the argument concerning a "gathering line", for instance, perhaps among others, United has concluded that if this Commission does not decide the argument, it will go on.

> Since the Commission has indicated approval of the transfer to United of costs relating to Boldman for purposes of the rate settlements [16] in the aforementioned Dockets, it is reasonable to conclude that it would likewise approve and favor the transfer of ownership of Boldman from Atlantic to United.

The aspects of the aforesaid rate compromise and settlement will not be considered as persuasive in this proceeding.

The Boldman Compressor Station, aside from the rate settlement proceedings, has been a principal concern of Washington in this proceeding. Washington has urged at some length the alleged disparity in compression service rendered by United to other interstate customers, albeit affiliates, and the alleged lack of compression furnished by United to Seaboard at or near Boldman. Washington contends that this is patently discriminatory, and a violation of Section 4 of the Natural Gas Act. To consider specifically this charge of a Section 4 violation, Cincinnati presented some evidence which it contended proved a discrimination by United to it, through another Columbia subsidiary (Kentucky Gas Transmission Company) and thus apparently urges that the discriminations are even in number, and both can be disregarded. It is concluded, on this record, that a Section 4 discrimination proceeding would encompass more than the evidence and allegations set forth in this Section 7 proceeding. While the public interest requirements of a Section 7 proceeding are broad, and care must be exercised to be certain that no illegality or discriminatory practices are present in a determination awarding a certificate issued as required by the public convenience and necessity, some operations may be convenient and necessary for the public, while other proceedings may be needed to remove aspects of discrimination. The determinations made herein are based upon the requirements of public convenience and necessity of Section 7 of the Natural Gas Act.[17]

This record contains references to the historical background of the construction and use of line KA-20-inch and the Boldman Station. The line was constructed about 1932, and for a considerable period of time served as the only facility by which Seaboard delivered gas to Washington. As United explained the development, after construction of the line, it was a "logical conclusion" that the compressor station at Boldman should be constructed and owned by Seaboard. United indicated that this "logical conclusion" was made before the enactment of the Natural Gas Act and its attendant regulation. Later, when it appeared to Columbia's management that the gas delivered to Seaboard might first be processed in order to remove the hydrocarbons, a so-called exchange arrangement was developed whereby the gas, while purchased by Seaboard at Boldman Compressor Station, is passed through the compressors and then is transported westward, and somewhere shortly after this compression, United concludes title to the gas returns to it (the contracts are not in this record to support this "passing of the title" from United to Seaboard before the compressor station, and transfer back to United after the compression has occurred). In

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[16] There appears to be some conflict between the intervenors, Washington and Baltimore, concerning the significance of a compromise and settlement in a rate proceeding as a precedent for future determinations, with Washington asserting at the hearing: ". . . what the parties agree to in settling a rate case has no bearing upon what the final and ultimate facts might be . . ."

[17] United's counsel contends to the same effect and stated:

> I didn't infer from Washington Gas Light's discussion yesterday, sir, that there was any question of discrimination of service in this case. This is a Section 7 proceeding. We are not under Section 5 (*sic*) of the Act. We have had no notice of any discrimination of anything of that nature . . .

Washington's brief, however, argues discrimination on Page 7 by its quote: ". . . Here is a discrimination which is prohibited by the Act . . ."

any event, this shifting-title-gas goes up to Kenova, West Virginia for extraction at a plant owned by United. The adequacy of that payment for the gas that once was in the title of Seaboard was not presented for this record. While all participants herein referred to United's gas transaction at Boldman as an exchange, the gas that actually moves eastward from Boldman in the KA-20-inch line is gas that United, in fact, transports, after a processing plant has extracted hydrocarbons, in quantities to compensate for loss of Btu in the exchange, over to Seaboard's transmission line on the outlet side of Boldman. In view of the processing by United of the gas, once delivered by United to Seaboard, and the title to which United believes it gets back on the outlet side of the station, the so-called exchange aspect of gas can be disregarded, except insofar as needed to measure quantities in amounts compensated for loss of Btu for delivery to Seaboard. There is no direct relationship, except to measure amounts, between deliveries into Boldman, and the quantities which physically flow in the KA-20-inch line.

Washington complains that the effect of all these gas deliveries, title transfers, and exchanges is that the gas received by Seaboard is uncompressed gas.[18] A proper cost analysis of this exchange service appears to be necessary; and though not considered at the hearing, an inquiry might be made concerning the revenues received for extraction and processing of the gas sold by United, but which United ultimately processes. The inquiry might also include whether, since Seaboard took title to this gas at Boldman, Seaboard would have a right to the revenues from the extraction process up at Kenova, and the ultimate sale thereafter.

Since it appears without contradiction that United does compress the gas that actually goes into service in Seaboard's KA-20-inch line, there appears to be present the same type of complex contract arrangement between affiliates that the West Virginia Commission sought to improve. The gas in service in the instant proceeding is compressed (which Washington denies in its reliance upon the form, but not the substance of this affiliate contract complexity or confusion). This record indicates a need for United to pay Seaboard for the compression cost on the gas which United processes at Kenova. The gas which is processed is handled at all times as United's gas exclusively; it is only when the gas needs to be compressed is it regarded as Seaboard's. This is a sacrifice of substance to form, as the affiliates have done by their contracts.

The processed gas compression cost at Boldman is a separate transaction from the compression activity at Beaver Creek for two different kinds and quality of gas are concerned; only by the character of the contracts that these affiliates have executed has the confusion resulted in placing title to the gas in Seaboard solely for the purpose of going through the compressor station, but such self-made difficulties cannot be used to load $800,000 of additional costs on United's customers located westwardly from Boldman, such as Dayton and Cincinnati, and at the same time endeavor to give a windfall to Washington and Baltimore by lowering the costs of their gas supplier. Clearly, this cannot be identified to be a Columbia System corporate realignment program. In the same manner that the West Virginia Commission recommended, it likewise appears herein that these affiliates can execute new contracts to reflect the transactions which

[18] The participants herein have referred to the pressure of the gas delivered by United to Seaboard for ultimate delivery to Washington, for instance, as uncompressed gas, despite this testimony from United's witness:

Q. So at the time of the eastward movement of the gas that goes for Atlantic Seaboard service, it is compressed by either Kentucky Hydrocarbons or United Fuel Gas at Beaver Creek location, by one or the other, is that correct?

A. That is correct, to such pressure that it doesn't need to be re-pumped there at Boldman.

occur in present operations, rather than endeavoring to add as a branch, or another stem, to a tree [19a] of contracts, with a base created by sales and deliveries no longer realistic in the present day.

This exchange arrangement, complicated as it may appear, and unrealistic as to its cost analysis as has apparently resulted, was approved by the Commission without any objection from Washington, although public notice was given of the filing of the application for the exchange and the date of hearing.[19] Thus, while a principal contention of Washington stems from the exchange arrangement, self aid on its part might have avoided the alleged discrimination to which Washington most vehemently protests. The public record of this exchange gas proceeding reflects that the gas delivered by United from production near Boldman was intended to be processed by United at Kenova, the silence by Washington in that Seaboard proceeding was not explained in this proceeding and it is concluded that the situation resultant from this exchange arrangement is not such an unreasonable discrimination, against Washington that, if it does exist, (which is not certain) can be changed by virtue of the record made in this proceeding.

Again, as the West Virginia Commission emphasized in its brief in the Supreme Court, the transactions between affiliates require explanations and showings in the public interest, not just a statement that this is what happens by virtue of contracts; the question is: why are the arrangements for sales and deliveries in the manner shown by the contracts, and is it in the public interest to permit such manner of shifting of title of gas to continue.[20]

This record points to a need for a comprehensive review of the contractual relationship among these applicant affiliates, if this application is to receive further consideration, rather than relying upon evidence which reflects the declarations of what the affiliate contracts provide. The form of affiliate contracts is no measure of the necessity for the transactions recited therein. More fundamental evidence may result in a different disposition of this "glaring inequity" or "gross inequity" as described by Washington.[21]

[19a] United also refers to the tree character of some phases of this project by declaring in its reply brief that the intervenors have tried to object to the separate parts of the application as if they were ". . . a bundle of twigs".

[19] Docket No. G–11184, United Fuel Gas Company and Atlantic Seaboard Corporation. In this proceeding, Seaboard proposed to put in some new cylinders in its compressor station in order to better provide for the exchange gas service. Perhaps Washington was lulled into a non-participation in the proceeding by the statement by United:

> . . . no major issue of substance has been raised herein, that the *project presented is relatively minor in nature* and relates solely to the providing of sufficient transmission capacity to the end that existing extraction operations can be continued. [Emphasis added.]

The effect of the "exchange" arrangement is for United to use the gas sold to Seaboard for United's processing plant, and then to resell the gas for distribution in Pittsburgh and not Washington. Perhaps this is deemed "minor" in view of the existing complexity between the affiliates.

[20] United's witness partially expresses the problem that must serve as difficulty for even him, in the following language: "We have got (*sic*) to try to clear the thing up so that the areas of operation and these questions of *who does what* are cleared up and eliminated." [Emphasis added.] If United wants to know *who does what*, the public interest needs also to know *why does who* do what, and *where* is the money from the transaction.

[21] Washington desires that the determination to be made in this proceeding be based upon the existence of discrimination, which Washington recognizes is insufficiently presented in this record by its observation:

> The difficulties of proof of undue discriminations should be kept in mind. We feel sure that the Presiding Examiner appreciates that neither the applicants (possibly meaning the intervenors), nor any other persons in their position, would volunteer in establishing the existence of any undue discrimination by United against any of its customers. [Parenthesis added.]

If, as Washington indicates, the intervenor participants will not establish a case for undue

The final project involved in the joint application concerns the request to transfer 139.5 or, generally considered, 140 miles of pipeline from Seaboard to United. The applicants state that this phase of the application is "inexorably" connected with the proposed merger of Amere into United, which having been found unwarranted, may dispose of this final phase of the application. However, the evidence urged principally by Washington and the Staff in support of a transfer of this segment of Seaboard's KA–20-inch line is that there is some intake of gas along the KA–20-inch line, and purchased in the name of United, along the line, for a distance of some 50 miles, with the greater volumes being purchased within 30 miles from Boldman. United mentioned that with the 20-inch size of this line, and the pressures at which deliveries were made from local production into the Seaboard line, United could not agree with Washington that this KA–20-inch line was, in effect, a gathering line. The Staff placed the matter directly to United's policy witness, whether this portion of the KA–20-inch line was a gathering line, and the definite answer was in the negative.[22] Cincinnati contends that on a basis of a 12-month period, some 65% of the quantity of gas delivered into the KA–20-inch line is delivered at Boldman, and that the balance of gas delivered by United into that line occurs principally within a 30-mile distance eastwardly from Boldman. From all of this evidence, Cincinnati concludes that the principal activity by United is near Boldman, and thus the 140-mile segment of the 420-mile long line is not used principally for gathering gas from United. There are certain delivery points used for gas intake into the KA–20-inch line, and 12 intake points would be eliminated if the transfer of the line were granted. The continued use of the 12 delivery points does not appear to be any concern or problem to United or Seaboard in rendering adequate service, and no improvement in service is asserted to await the transfer of the line. In fact, United has reiterated throughout that there is no problem in rendering the gas service from any of the facilities involved in this application under their present operation. Washington, Baltimore and the Staff refer to the descriptions of the changes that would be made if a transfer occurred and then argue that all the changes mean better service and better arrangements for United. The conclusions do not follow upon those statements of changes; United has stated that service is without problems from these facilities now, and no changes in service will occur. United's witness did say that he thought that from an "administrative and organizational viewpoint", the proposals would result in a better "functional" grouping of the operations of the companies concerned. This conclusion is without merit in the absence of some showing that economies will result, or service will be better, or incidentally, from a public interest point of view, will cost of services be less. None of this is shown in this record, and general statements of "better functional grouping" as advanced in the question by Washington's counsel does not prove an adequate substitute. Terms of this general character have an attraction for argument, but the use

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discrimination, which must be found in order to sustain the Washington position, and which is claimed to exist, then Washington must be relying upon and urging this regulatory agency to initiate a separate inquiry into all of the contractual relationships among these Columbia affiliates to ascertain if undue discrimination does exist. Washington apparently recognizes that the present record is insufficient to establish its claim.

[22] The Staff question to United's policy witness and his answer were:

Q. Would you say that the western portion of line KA up to Flat Top, up to Flat Top Compressor station takes on many of the characteristics of a gathering line, and that it is operated more closely with the requirements of United Fuel than the requirements of Atlantic Seaboard?

A. No.

The Staff in their brief contend that the primary function of the line KA–20-inch is to gather United's gas.

of them must await some reference to monetary measures in order to consider the public interest. No reliance is thus placed upon this basis asserted by Washington.

In conclusion respecting the KA–20-inch line, an understanding of the Columbia System operations, and particularly United's serving as the main ". . . gas supplier to the whole Columbia system . . .", (as thus described by the West Virginia Commission) indicates that difficult problems of gas service will not arise, nor do any exist presently which require a transfer of a portion of this 420-mile long line from one affiliate in the Columbia System to another. In fact, it may be to the credit of the Columbia System, that no matter which subsidiary holds title to either the pipeline facilities or the gas, the service to the public will not suffer. This is not to say however, that the public interest may not have a real concern with which subsidiary gets the money when gas is delivered and sold, and may not also want to be sure that service is rendered at the lowest reasonable rates consistent with the requirements of the public necessities. Service considerations aside, therefore, the principal impetus for this KA–20-inch line transfer is partially based upon Washington's contention that Boldman and the KA–20-inch line transfer should be considered together, and since Washington relies upon alleged discrimination respecting Boldman, the same assertions should carry over to the KA–20-inch determination. United, however, states that the KA–20-inch line consideration is also linked to the Amere merger proposal and the Boldman proposal. It is concluded that neither contention has established on this record any public interest to require the transfer of the KA–20-inch line. United concludes its brief with the statement that appears somewhat promotional in character: "The natural gas industry is dynamic and ever changing; administrative regulation must likewise be flexible enough to recognize and resolve changing conditions." Apparently the foregoing statement is intended to express the public interest to accept the project set forth in this proceeding. United asserts a negative, but not a positive of what is the public interest by this finale: "The ultimate public interest cannot always be balanced with black and white, dollars and cents." However that may be, the dollars and cents test to measure the public interest will be considered adequate until a better test is shown, and that has not been done in this proceeding. Applying the dollars and cents test in this proceeding reveals that certain jurisdictional customers of United will have added costs of some $800,000 due to any transfer of the portion of the KA–20-inch line, and in addition further costs of over $400,000 would be loaded on due to the requested Amere merger and transfer of the Boldman station. All of these costs would be added [23] without any change or improvement in gas service, if the application were granted.

The facts in this proceeding establish that as to all three projects described in the application, the public convenience and necessity do not require the granting of the application. United has repeated throughout its brief that the 3-project character of the application must be considered as an entirety, and apparently United requests all or none of the application. In any event, it is to be noted that a more complete record would exist for the various contentions which have been asserted if the specific contracts [24] applicable to each of the transactions described in the proceeding had been presented in evidence.

[23] Baltimore in its brief ignores the total dollar cost, and submits a computation showing the cents per Mcf added and concludes that the ". . . proposals of . . . applicants . . . will not have an earth shaking impact . . .", apparently, because its figures look like less.

[24] While official notice could perhaps be taken of all the contracts filed by Columbia System subsidiary companies over the past 20 years of regulation, it is concluded that such procedure should not be followed respecting the fundamental issues here involved, especially with the lack of any evidence of reasonableness and necessity regarding the form of the transactions set forth in the contracts . . . between the affiliates.

In connection with those contracts, the circumstances attendant upon their execution and the gas service activities resultant from the contracts, would aid in a determination of the discrimination issues raised. The present record showing the deliveries of gas, the title transfer, the gas compression, the title reversion, the extraction plant revenues, the gas procured from an unaffiliated source at Beaver Creek for Seaboard, all reflect a complexity of operations that warrant a more complete presentation than was done in this proceeding. In addition, the gas supply contract matters sought to be developed by the West Virginia Commission in its rate proceeding should not continue to be ignored or submerged.

By way of summary, and supplementary to the foregoing which constitute findings and conclusions of law, and also based upon a consideration of the entire record in this proceeding, the evidence adduced and the briefs filed, are the following additional findings and conclusions, which modify, reject, or adopt the proposed findings and conclusions submitted by the participants herein as shown hereby:

1. United and Amere, West Virginia corporations having their principal places of business in Charleston, West Virginia, are "natural gas companies" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

2. Seaboard, a Delaware corporation having its principal place of business in Charleston, West Virginia, is a "natural gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

3. The proposed abandonment by Amere upon the merger into and with United should not be permitted by, and is not required by the public convenience and necessity, and permission and approval therefor should be denied as hereinafter ordered.

4. The facilities proposed to be abandoned by Seaboard, as hereinbefore described and as more fully described in the application herein, are used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

5. The proposed abandonment and sale by Seaboard of the aforesaid facilities should not be permitted by and is not required by the public convenience and necessity and permission and approval therefor should be denied as hereinafter ordered.

6. The facilities proposed to be acquired and operated by United and the facilities proposed to be constructed and operated by United, as hereinbefore described and as more fully described in the application herein, are or will be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission and the acquisition, construction and operation thereof by United are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

7. The acquisition, construction and operation of the facilities, including the services thereby provided, as proposed by United are not required by the public convenience and necessity and a certificate therefor should not be issued and an order should be entered denying the application for such a certificate.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission, on appeal or review by the Commission on its own motion, as provided by its Rules of Practice, that:

(A) The application by Amere for permission and approval of the abandonment by Amere upon the merger into and with United of the facilities hereinbefore described, as more fully described in the application and exhibits in this proceeding, is hereby denied.

(B) The application by Seaboard for permission and approval of the abandonment by Seaboard upon the sale to United of the facilities hereinbefore described, as more fully described in the application and exhibits in this proceeding, is hereby denied.

(C) The application by United for permission and approval of the acquisition, construction and operation of the facilities, including the services thereby provided, as proposed by United, as more fully described in the application and exhibits in this proceeding, is hereby denied.

SAMUEL W. JENSCH,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

PETROLEUM OFFSHORE LEASEHOLDS, INC. (OPERATOR), ET AL., DOCKET NO. G–19010; AREA RATE PROCEEDING, DOCKET NO. AR61–2, ET. AL.

ORDER SEVERING PROCEEDING AND FIXING DATE OF HEARING

(Issued January 17, 1963)

On July 20, 1959, Petroleum Offshore Leaseholds, Inc. (Operator) *et al.*, (Offshore) filed in Docket No. G–19010 an application for certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act as successor in interest to Phillips Petroleum Company (Phillips) to sell gas to Transcontinental Gas Pipe Line Company (Transco).[1] Said gas is produced from blocks 172 and 184, Eugene Island Area, approximately 42 miles off the southern coast of Louisiana. On April 28, 1960, Offshore was granted temporary authority to sell the gas to Transco as proposed, subject to the condition that Offshore refund to Transco any amounts collected in excess of the amount resulting from the rate finally determined to be proper in Docket No. G–19010. Offshore filed its acceptance of temporary authority and the sale commenced thereunder. On June 12, 1961, this matter was consolidated with the Area Rate Proceeding, AR61–2, *et al.*

On October 8, 1962, Offshore filed a petition for the issuance of an order granting a permanent certificate of public convenience and necessity in accordance with its application as modified by a settlement agreement.

Under the terms of the settlement agreement, commencing July 1, 1962, the rate charged for natural gas under Offshore's Rate Schedule No. 1 shall be 19.0¢ per Mcf subject to possible change, as therein provided. Offshore agrees that no rate change shall be filed prior to July 1, 1967. As to offshore production not subject to the taxing authority of the State of Louisiana, Offshore shall be entitled, during the moratorium period, to file a rate increase in an amount equal to half of the amount of any tax which may be imposed by the United States Government. If the offshore production is held to be subject to the taxing authority of the State of Louisiana, the price for which Offshore may file during

[1] Phillips had theretofore been granted a certificate of public convenience and necessity to make these sales in Docket No. G–14244.

the moratorium shall be 20.625¢ per Mcf inclusive of tax reimbursement, effective as of the date of the initial payment of such tax but not earlier than the date of filing of the rate increase. The prices fixed in the settlement agreement are subject to change and revision upward or downward as the result of any final determination prescribing a rate or rates applicable to the gas subject to the agreement in Docket No. AR61–2 or other applicable area rate proceedings, from the date of such determination.

Offshore shall refund to Transco the difference between the amount per Mcf actually collected for gas delivered under its Rate Schedule No. 1 and the settlement price of 19.0¢ multiplied by the volumes delivered in June 1962, and in each successive prior month until a dollar amount has been compiled which is equal to ⅔ of the difference between the amount paid to Offshore by Transco for gas delivered from the date of initial delivery and the amount that would have been due had a rate of 19.0¢ prevailed during the entire period. Interest shall be paid at a rate of 7% per annum. No interest shall accrue after July 1, 1962.

Transco shall have the right to make up gas paid for but not taken over a four year period in lieu of the two year period provided for in the contract for sale comprising Offshore's Rate Schedule No. 1.

The settlement agreement further provided that none of the parties agreeing thereto would be prejudiced in any position taken in any other proceeding.

This matter was previously consolidated with the Area Rate Proceeding, Docket No. AR61–2. In view of the proposed settlement this matter should be severed from said proceeding.

The Commission finds:

(1) It is in the public interest that the above-listed proceeding be severed from the Area Rate Proceeding, Docket No. AR61–2, *et al.*

(2) This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations.

The Commission orders:

(A) The above-listed proceeding is hereby severed from the Area Rate Proceeding, Docket No. AR61–2, *et al.*

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act, and the Commission's Rules of Practice and Procedure, a hearing will be held on February 18, 1963, at 9:30 a.m. (EST), in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however*, that the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of Section 1.30 (c) (1) or (c) (2) of the Commission's Rules of Practice and Procedure in accordance with the terms of the settlement proposal filed on October 8, 1962. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Offshore to appear or be represented at the hearing.

(C) Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before February 7, 1963. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SHELL OIL COMPANY, DOCKET NO. CI63-267

ORDER GRANTING REHEARING AND AMENDING TEMPORARY CERTIFICATE

(Issued January 17, 1963)

Shell Oil Company (Shell) on December 21, 1962, filed an application for rehearing with respect to the initial price conditioning provision contained in Paragraph (1) of the Commission's letter-order issued December 5, 1962, granting Shell a temporary certificate authorizing the sale of natural gas to Colorado Interstate Natural Gas Company (Colorado Interstate).

Shell, on August 27, 1962, filed an application for a certificate of public convenience and necessity authorizing it to sell natural gas produced from acreage in Laverne Field, Harper County, Oklahoma. Incorporated in the application was a request for a temporary certificate pursuant to Section 157.28 of the Commission's Regulations under the Natural Gas Act. Shell alleged in its request that its acreage was being drained by three adjoining producing wells.

The acreage from which Shell proposed to sell natural gas had been acquired by it from Marathon Oil Company (Marathon).[1] Marathon had assigned the acreage to Shell under a "Farmout Agreement" entered into on July 28, 1960.[2] The acreage was covered by a contract between Marathon and Colorado Interstate dated April 9, 1957.[3] Marathon, however, had never drilled on the particular acreage.

Subsequent to the assignment, Shell drilled and completed a well on the acreage, and since the assignment was subject to the Marathon-Colorado Interstate contract dated April 9, 1957, Shell ratified the contract on May 18, 1962, and then filed its certificate application. Shell filed the Marathon-Colorado Interstate contract and the ratification agreement as its rate schedule to accompany the certificate application.

Ohio, on May 7, 1962, had filed a petition requesting that the Commission issue an order approving a settlement proposal concerning the rates under 49 of its filed rate schedules and the then pending rate proceedings relating thereto. The settlement proposal included Ohio's FPC Rate Schedule No. 30 and rate proceedings relating thereto.[4] The settlement proposal which included, among other things, a moratorium until January 1, 1964, on the filing of increases in rates was approved by the Commission by order issued June 28, 1962, in *The Ohio Oil Company, et al.*, Docket No. RI60-92, *et al.*, 27 FPC 1373.

The Commission in granting the temporary certificate to Shell by letter-order issued December 5, 1962, attached to the issuance of the certificate a condition relating to the initial price for the natural gas sold thereunder by providing:

[1] Formerly The Ohio Oil Company (Ohio).

[2] The date of the assignment is, for the first time, indicated in Shell's application for rehearing.

[3] Marathon had received a certificate covering the assigned and other acreage and the contract between Marathon and Colorado Interstate had been accepted for filing as Marathon's FPC Gas Rate Schedule No. 30.

[4] It is to be noted that Ohio's settlement proposal was filed on May 7, 1962. Shell ratified the Marathon (Ohio)-Colorado Interstate contract on May 18, 1962. The acreage, however, had been assigned by Ohio to Shell on July 28, 1960, almost 2 years before the filing of the settlement proposal.

That the total initial price therefor shall not exceed 15.0 cents per Mcf at 14.65 psia plus upward Btu adjustment, and pursuant to the rate settlement proposal filed by Marathon (Ohio Oil Co.) and approved by the Commission with respect to Marathon's FPC Gas Rate Schedule No. 30, no increased rate shall be filed under Shell's FPC Gas Rate Schedule No. 278 prior to January 1, 1964.

In its application for rehearing Shell states as follows:

> From the quoted language it is apparent that the letter order fosters on Shell the end result of a general rate settlement negotiated by Marathon. However, Shell had acquired Marathon's interest in the acreage by assignment dated July 28, 1960, long prior to the Marathon rate settlement. * * * Admittedly, no quarrel can be raised with the Commission's initial action herein since the Commission had not been advised of the assignment. (Application for Rehearing, page 2.)

At the time action was taken on Shell's request for a temporary certificate it appeared from the material before the Commission that Shell had ratified the Marathon-Colorado Interstate contract, Marathon (Ohio Oil Co.) FPC Rate Schedule No. 30, subsequent to the submission of the rate settlement offer relating to the same rate schedule. There was no information submitted with respect to the date the assignment of part of the acreage covered by Marathon's FPC Rate Schedule No. 30 notwithstanding the fact that the assignment had occurred almost 2 years prior to the date of the submission of the rate settlement proposal. Shell correctly states in the application for rehearing that "the Commission had not been advised of the assignment."

In view of the facts brought to the Commission's attention for the first time by Shell's application for rehearing, rehearing should be granted and the temporary certificate granted by letter order issued December 5, 1962, should be modified as hereinafter ordered.

The Commission orders:

(A) Shell Oil Company's application for rehearing filed December 21, 1962, be and hereby is granted.

(B) The condition of Paragraph (1) of the letter order issued December 5, 1962, be modified to read as follows:

> That the initial price therefor shall be 16 cents per Mcf at 14.65 psia plus upward Btu adjustment as provided in Shell's related FPC Gas Rates Schedule No. 278, subject to Shell refunding to Colorado Interstate any amounts collected from the date of delivery, plus interest at 7 percent per annum, in excess of 17 cents per Mcf which may be determined to be in excess of the price required by the public convenience and necessity in Docket No. CI63-267.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, UNITED NATURAL GAS COMPANY, NORTH PENN GAS COMPANY, DOCKET NO. CP61-284; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP61-292; TEXAS EASTERN TRANSMISSION CORPORATION, CP62-214; NEW YORK STATE NATURAL GAS CORPORATION, DOCKET NO. CP62-250; NEW YORK STATE NATURAL GAS CORPORATION, TENNESSEE GAS TRANSMISSION COMPANY, UNITED NATURAL

GAS COMPANY, DOCKET NO. CP62-275; THE SYLVANIA CORPORATION, DOCKET NO. CP62-276

FINDINGS AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued January 18, 1963)

Applications pursuant to Section 7 of the Natural Gas Act have been filed by the above Applicants in the respective dockets indicated seeking certificates of public convenience and necessity and, in one instance, permission and approval to abandon certain facilities, all as hereinafter set forth and as more fully set forth in the respective applications and supplements thereto which are on file with the Commission.

In Docket No. CP61-284, by applications filed May 1, 1961, and July 21, 1961, as supplemented on May 17, May 29, July 13, and July 20, 1961, and July 27, 1962, Transcontinental Gas Pipe Line Corporation (Transco), United Natural Gas Company (United) and North Penn Gas Company (North Penn), jointly, seek certificate authorization to develop and operate, as the Wharton Storage Field, reservoirs within the Oriskany Horizon of Wharton Field, Potter and Cameron Counties, Pennsylvania, for the storage of natural gas to help meet the increasing peak day requirements of Applicants' existing customers.

This project is proposed to be developed in two stages. Under the initial development (Stage I) which is the subject of this application as amended on July 27, 1962, Applicants propose to construct and operate facilities at an estimated total cost of $16,591,100, all of which (except for an expenditure of some $65,000 by United for field facilities) is to be borne by Transco. The financing of this amount is included in Transco's over-all financing program covering all of its authorized (but not yet constructed) facilities as well as all of its pending applications including that in Docket No. CP61-292 which is covered hereinafter.

The proposed project herein is based upon two agreements, each dated March 17, 1961, as revised, one between Transco and United and the other between United and North Penn, delineating the contributions by and the benefits allocated to each participant according to their specific agreements.

Under a proposed initial development program to be completed by October 1963 to allow a year for injection of gas before rendering service during the winter of 1964-65, it is estimated that the field will have a capacity to hold efficiently in storage 10,996,667 Mcf of active gas and that the field will have the ability to deliver from the Wharton Compressor Station at a rate of not less than 115,347 Mcf per day until 85% of the active gas has been withdrawn. Upon full development of the field, it is estimated that the storage pool will have a capacity to hold efficiently in storage 24,000,000 Mcf of active gas with a deliverability from the Wharton Compressor Station at a rate of not less than 300,000 Mcf per day until 85% of the active gas has been withdrawn.

Under both the initial and the full development programs, Transco's assigned storage capacity is a quantity equal to 75% of the rated storage capacity and United's assigned storage capacity is a quantity equal to 25% of the rated storage capacity. United's assigned delivery capacity is a quantity equal to 1/120th of its assigned storage capacity and Transco's assigned delivery capacity is a quantity equal to the balance of the rated delivery capacity. United's assigned storage capacity and assigned delivery capacity include North Penn's respective assigned capacities.

North Penn owns certain wells, leases, oil and gas rights and native gas in the Wharton Field which are requisite to the development and operation of the Wharton Storage Pool. In consideration of the dedication of North Penn's

properties to the project, the other parties have agreed that North Penn shall retain for its own use not more than 456,945 Mcf of the top storage capacity under the initial development program and 1,000,000 Mcf at full development, and North Penn is assured the right to withdraw gas at a rate not to exceed 4,569 Mcf in any one day under the initial program, and not to exceed 10,000 Mcf in any one day at full development.

Applicants have agreed upon a pro-ration of opertaing expenses of 80% to Transco, 16% to United and 4% to North Penn.

In Docket No. CP61-292, Transco, by application filed May 17, 1961, as supplemented on July 13, 1961, and as amended on July 27, 1962, seeks certificate authorization for the construction and operation of approximately 15.57 miles of 24-inch loop line in Pennsylvania and 10,000 horsepower of compression in a new intermediate station, to be utilized, together with the Wharton Storage Pool proposed in Docket No. CP61-284, for the rendition of increased natural gas storage service to ten existing wholesale customers. The estimated cost of these proposed new facilities is $6,130,000 which will be financed as hereinbefore stated.

The additional contract demands contemplated aggregate 53,500 Mcf for the winter 1963-64; 121,000 Mcf for the winter 1964-65; and 146,000 Mcf for the winter 1965-66. The additional storage service of 53,500 Mcf beginning in the winter 1963-64 will be purchased by Transco from New York State Natural Gas Corporation under Docket No. CP62-250. The remaining 92,500 Mcf per day required thereafter will be supplied entirely from the Wharton Pool. Rates for the increased storage service to the existing customers will be rendered under Transco's Rate Schedule GSS.

In Docket No. CP62-214, Texas Eastern Transmission Corporation (Texas Eastern), by application filed on March 15, 1962, as supplemented on June 4 and August 2 and 6, 1962, seeks certificate authorization to construct and operate, as part of its existing natural gas system, approximately 8.84 miles of 30-inch pipeline loops on its existing 24-inch pipeline between its Perulack Station in Juniata County, Pennsylvania, and Station 26, Hunterdon County, New Jersey, to increase by some 76,500 Mcf of natural gas per day its capacity to meet the additional long term winter requirements of seven of its existing customers in Pennsylvania and New Jersey, at an estimated total cost of $1,437,000. The application includes a request for authorization to render this additional service. The additional 76,500 Mcf per day is proposed to be stored for Texas Eastern by New York State Natural Gas Corporation as described below.

Temporary authorization was issued to Texas Eastern in Docket No. CP62-214 on August 24, 1962.

In Docket No. CP62-250, New York State Natural Gas Corporation (New York Natural), by application filed April 27, 1962, as amended on August 2, 1962, seeks certificate authorization to render a new natural gas storage service for Texas Eastern, to increase its present natural gas storage service for Transco and to construct and operate a 3,300 horsepower transmission compression station with appurtenant facilities including approximately 2900' of 14-inch pipeline, near the Leidy Storage Pool Compression Station in Clinton County, Pennsylvania, at a total estimated cost of $1,206,579.

Temporary authorization was issued to New York Natural in Docket No. CP62-250 on August 24, 1962.

The proposed new service for Texas Eastern to commence during the 1962 injection period consists of a maximum of 1,259,800 Mcf to be injected in 1962 and delivered to Texas Eastern during the 1962-63 withdrawal period at not to exceed 25,196 Mcf per day; thereafter, a maximum of 3,825,000 Mcf annually

and not to exceed 76,500 Mcf peak day. The proposed increased service for Transco is for an additional 3,075,000 Mcf annually (a total authorization of 10,575,000 Mcf) with deliveries in withdrawal periods of an additional 53,500 Mcf peak day (a total authorization of 203,500 Mcf) commencing in 1963–64. These services will be rendered under New York Natural's filed GSS–1 rate schedule.

In Docket No. CP62–275, New York Natural, Tennessee Gas Transmission Company (Tennessee), and United Natural, by joint application filed on May 25, 1962, seek certificate authorization for the construction, operation and acquisition of natural gas facilities incident to the initial development of the Ellisburg Storage Pool in Potter County, Pennsylvania, for the use of the three joint Applicants.

The application states that New York Natural and Tennessee each own undivided one-half interests in 11,281 acres of land in the Ellisburg Pool and that United owns storage interests in 8,498 acres thereof.

The total cost of construction for the initial plan of development of the Ellisburg Storage Pool under this application, including compressors, wells, well lines and other appurtenant facilities, is estimated at $9,182,900, which will be borne as follows: $3,977,505 each by New York Natural and Tennessee, and $1,227,890 by United. In addition, New York Natural asks authority to construct and operate approximately 5.1 miles of 20-inch connecting pipeline at an estimated cost of $377,235; Tennessee asks authority to construct and operate approximately 7.8 miles of 26-inch connecting pipeline at an estimated cost of $1,074,000; and United asks authority to construct and operate approximately 700 feet and 800 feet of 12-inch connecting pipelines at an estimated cost of $76,000 (this $76,000 is included in the $1,227,890 cost to United mentioned above) and also to acquire from The Sylvania Corporation approximately 4.2 miles of 12-inch connecting pipeline (which Sylvania asks permission and approval to abandon by sale to United in Docket No. CP62–276) at a cost of $3,037. United also proposes to operate certain existing pipelines which were originally utilized as production lines in the Ellisburg area.

The quantities of storage gas and deliverabilities proposed under the initial development of Ellisburg Storage Pool, at a pressure base of 15.025 psia, are:

Base storage gas (Mcf):	
New York Natural	12,714,000
Tennessee	12,714,000
United	1,600,000
	27,028,000
Top storage gas (Mcf):	
New York Natural	9,600,000
Tennessee	9,600,000
United	2,400,000
	21,600,000
Maximum daily deliverability available (Mcf):	
New York Natural	78,000
Tennessee	78,000
United	14,000
	170,000

The three Applicants propose to share their joint capital and operating costs at Ellisburg in proportion to the storage capacity to be made available to each.

Tennessee also seeks authority to occupy additional storage gas capacity in the Ellisburg Pool for the purpose of accommodating and holding quantities of migrated gas which it will have in the pool due to migration from the adjacent Hebron Storage Pool, up to its full share of the total storage gas capacity ultimately to be developed (being 39% of such total storage gas capacity). The parties have agreed that the migrated gas balance in the Ellisburg Pool is the property of Tennessee and that of September 26, 1961, the quantity was approximately 27,790,000 Mcf.

Tennessee proposes to fulfill its base gas requirement for the Ellisburg Pool by utilizing 12,714,000 Mcf of the migrated gas therein, and New York Natural proposes to fulfill its base gas requirement by purchasing 12,714,000 Mcf of Tennessee's migrated gas therein at the commodity rate (now 29.1¢ per Mcf) applicable to sales by Tennessee under its Rate Schedule CD–4. United's base gas requirement will be provided by injecting 1,600,000 Mcf purchased from pipeline suppliers at an estimated cost of $644,800.

Tennessee also requests authorization to establish additional delivery points at interconnections of its facilities with those of New York Natural and United, respectively, at the Ellisburg Pool for the purpose of delivering at Ellisburg gas which is presently being delivered at other points.

In Docket No. CP62–276, The Sylvania Corporation (Sylvania), by application filed on May 25, 1962, seeks permission and approval to abandon in place by sale to United Natural Gas Company approximately 4.2 miles of 12-inch pipeline which segment of connecting line United asks authority to acquire in Docket No. CP62–275, as hereinbefore referred to. Sylvania also in this application seeks certificate authorization to change its present point of delivery to United in Hebron Township, Potter County, Pennsylvania, to the point in Allegany Township where the subject 4.2 mile section of pipeline joins that portion of Line Z–20 which is to be retained by Applicant. The cost of relocating the metering station involved is estimated to be $2,850.

On July 16, 1962, North Penn Gas Company filed a petition to intervene in Docket No. CP62–275, which petition was denied by the Commission by order issued on December 4, 1962.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 8, 1963, respecting the matters involved in and the issues presented by the applications in this consolidated proceeding. A number of petitions to intervene and notices of intervention have been filed (other than the petition of North Penn in Docket No. CP62–275) in one or more of the subject dockets by various interested companies and State Commissions, some of which have been amended or supplemented. In all cases, the burden of such filings, as amended, has been that the petitioners did not request formal hearing in these proceedings and did not object to the hearing and disposition of the subject applications under the shortened procedure provided for by the Commission's Rules, but that each petitioner desired to preserve its rights to appear and participate fully in the event that these matters should be set for formal hearing. Inasmuch as the abridged hearing procedure is being used herein, no further action on the various intervention petitions and notices appears necessary.

No protests to the granting of the applications having been received, and no other appearances having been entered at the hearing, staff counsel moved orally that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c) (1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G–1143 (7 FPC 145).

(2) Applicant, United Natural Gas Company, a Pennsylvania corporation having its principal place of business in Oil City, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1943, in Docket No. G–328 (3 FPC 959).

(3) Applicant, North Penn Gas Company, a Pennsylvania corporation having its principal place of business in Port Allegany, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 2, 1943, in Docket No. G–335 (3 FPC 936).

(4) Applicant, Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued October 11, 1947, in Docket No. G–880 (6 FPC 148).

(5) Applicant, New York State Natural Gas Corporation, a New York corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 27, 1942, in Docket No. G–312 (3 FPC 844).

(6) Applicant, Tennessee Gas Transmission Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued July 15, 1947, in Docket No. G–910 (6 FPC 777).

(7) Applicant, The Sylvania Corporation, a Pennsylvania corporation having its principal place of business in Oil City, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 17, 1943, in Docket No. G–327 (3 FPC 1066).

(8) The facilities to be constructed and operated by Transco, United and North Penn in Docket No. CP61–284; by Transco in Docket No. CP61–292; by Texas Eastern in Docket No. CP62–214; by New York Natural in Docket No. CP62–250; to be constructed, operated and acquired by New York Natural in Docket No. CP62–275; and to be relocated by Sylvania in Docket No. CP62–276, all as hereinbefore described and as more fully described in the respective applications herein, as supplemented and amended, are proposed to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, as integral parts of the existing pipeline systems and operations of the respective Applicants, and the construction, operation, acquisition and relocation thereof, respectively, by Applicants are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(9) The construction, operation, acquisition and relocation of the proposed facilities, respectively, by Applicants are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(10) Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the requirements, rules and regulations of the Commission thereunder.

(11) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (d)(2), (d)(3) and (e) of Section 157.20 of such Regulations (except that paragraphs (a) and (c)(1) do not apply to Docket Nos. CP62-214 and CP62-250, and paragraphs (d)(2) and (d)(3) apply only to United in Docket No. CP62-275). The respective Applicants should be required to complete and place in actual operation the facilities or to complete the acts hereinafter authorized within two years from the date on which this order issues.

(12) Applicants United and North Penn in Docket No. CP61-284 should be required to submit, upon completion of Stage I of the Wharton Project, accounting entries reflecting, by primary accounts, the transfer from production to storage of the recorded costs and accumulated provisions for depreciation and amortization with respect to all facilities of the storage project continued in service.

(13) The facilities proposed to be abondoned by Sylvania in Docket No. CP62-276, as hereinbefore described and as more fully described in the application therein, are subject to the jurisdiction of the Commission and abandonment of such facilities by sale to United is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(14) Such abandonment by Sylvania, as hereinbefore described, is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

(15) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued authorizing the construction and operation of facilities by Transco, United and North Penn in Docket No. CP61-284; by Transco in Docket No. CP61-292; by Texas Eastern in Docket No. CP62-214; by New York Natural in Docket No. CP62-250; to be constructed, operated and acquired by New York Natural in Docket No. CP62-275; and to be relocated by Sylvania in Docket No. CP62-276; all as hereinbefore described and as more fully described in the respective applications, as supplemented and amended, for the transportation and sale of natural gas in interstate commerce as therein set forth, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned by Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (d)(2), (d)(3) and (e) of Section 157.20 of such Regulations (except that paragraphs (a) and (c)(1) do not apply to Docket Nos. CP62-214 and CP62-250, and paragraphs (d)(2) and (d)(3) apply only to United in Docket No. CP62-275). The respective Applicants shall complete and place in actual operation the facilities or complete the acts hereinabove authorized within two years from the date on which this order issues.

(C) Applicants United and North Penn in Docket No. CP61-284 shall submit, upon completion of Stage I of the Wharton Storage Project, accounting entries

reflecting, by primary accounts, the transfer from production to storage of the recorded costs and accumulated provisions for depreciation and amortization with respect to all facilities of the storage project continued in service.

(D) Permission for and approval of the abandonment of facilities by Sylvania by sale to United, as hereinbefore described and as more fully described in the application in Docket No. CP62-276, be and same are hereby granted.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

PORTLAND GENERAL ELECTRIC COMPANY, CROWN ZELLERBACH CORPORATION AND PUBLISHERS' PAPER COMPANY, PROJECT NO. 2233

ORDER DENYING APPLICATIONS FOR REHEARING

(Issued January 21, 1963)

On December 31, 1962, Portland General Electric Company and Publishers' Paper Company filed a joint application and Crown Zellerbach Corporation filed a separate application for rehearing of our Opinion and Order No. 370, issued December 3, 1962, 28 FPC 924, in the above-entitled proceedings. In our opinion and order we denied the request of the applicants to strike Articles 9 and 10 from the license. These articles provide that the licensee may be required to convey land to the United States for navigation facilities and supply power for the operation of such facilities.

The applicants contend that if property were required to be transferred to the United States under Articles 9 and 10 in order to permit enlargement of the navigation facilities, the power generating and paper-making facilities at the site would necessarily be jeopardized or rendered useless to their great cost and detriment. We do not think that applicants can assume on the basis of the record and the physical conditions at Williamette Falls that possible enlargement of the navigation facilities will necessarily require the conveyance of land that will damage these industrial properties. There is other project land that might be used for navigation facilities and could be affected by Articles 9 and 10. There is nothing to show that the only possible way to enlarge the navigation facilities would be to enlarge the present canal by increasing its width on the river side where the power and paper plants are situated.

Furthermore, as noted in our opinion the substance of Articles 9 and 10 are set forth in Section 11 of the Federal Power Act. They are of general import and would provide for the conveyance of property from the licensee to the United States when and where needed for the improvement of navigation. Such articles, which are used in many licenses, would have an effect on the property of other licensees similar to that on the property of the applicants here. The obligations and risks of a license, common to all licensees, must be undertaken by those permitted to make use of the navigable waters of the United States.

The Commission finds:

The applications for rehearing filed on December 31, 1962, by Portland and Publishers' jointly, and by Crown Zellerbach present no new facts or principles of law which were not considered by the Commission when it issued Opinion No. 370 on December 3, 1962, or which having now been considered warrant any change or modification of said order.

The Commission orders:

The applications for rehearing referred to above are hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

TELLURIDE POWER COMPANY AND UTAH POWER & LIGHT COMPANY, PROJECT NOS. 814 AND 994

ORDER APPROVING TRANSFER OF LICENSE

(Issued January 21, 1963)

Joint application was filed on June 1, 1962 by Telluride Power Company, licensee for major Project No. 814 and transmission line Project No. 944, and Utah Power & Light Company, of Salt Lake City, Utah, for Commission approval of transfer of the licenses for the projects from the former to the latter.

According to the application, the approval herein sought is part of a merger transaction between the transferor and the proposed transferee, application for authority to consummate which has been filed with the Commission and designated as Docket No. E-7034. Joint applicants herein request that Commission approval of the transfer of the licenses involved be made effective as of the date of conveyance of the project properties from Telluride Power Company to Utah Power & Light Company.

The license for transmission line Project No. 994 waives Section 8 of the Federal Power Act, and consequently no Commission approval of the transfer of license is required.

The Commission finds:

(1) The proposed transferee is a private corporation organized under the laws of the State of Maine and authorized to do business within the States of Utah, Idaho, and Wyoming, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary for the operation of the project.

(2) Approval of the transfer of the license for Project No. 814 as hereinafter provided will not be inconsistent with the public interest.

The Commission orders:

(A) The transfer of the license for major Project No. 814 from Telluride Power Company to Utah Power & Light Company is hereby approved, effective as of the date of conveyance of the project properties from Telluride Power Company to Utah Power & Light Company, subject to the provisions of Section 9.3 of the Commission's Regulations under the Federal Power Act, and provided that in effecting the transfer neither the expenditures on account of the project nor the net investment therein shall be increased on account of the transfer.

(B) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Federal Power Act, and failure to file such an application shall constitute acceptance of the license for Project No. 814. In acknowledgment of the acceptance of the license, this instrument shall be signed for the new licensee and returned to the Commission within 60 days from the date of issuance of this order accompanied by a certified copy of the deed of conveyance or other instrument evidencing transfer of the property under license, together with evidence of the recording thereof.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

UTAH POWER & LIGHT COMPANY, DOCKET NO. E-7034

ORDER AUTHORIZING ACQUISITION AND MERGER OR CONSOLIDATION OF FACILITIES

(Issued January 21, 1963)

Utah Power & Light Company (Utah Power), incorporated under the laws of the State of Maine and doing business in the States of Utah, Wyoming and Idaho, with its principal business office at Salt Lake City, Utah, filed an application on April 4, 1962, as supplemented on April 5, June 27, and December 31, 1962, for authorization, pursuant to Section 203 of the Federal Power Act, to acquire all of the assets and facilities of Telluride Power Company (Telluride), a corporation organized under the laws of the State of Delaware and doing business in Utah, with its principal business office at Salt Lake City and its main operating office at Richfield, Utah. Telluride, a wholly-owned subsidiary of Utah Power, supplies electric service in southwestern Utah to the Counties of Millard, Sanpete, Sevier, Beaver, Juab, Piute and Garfield, and to 30 incorporated communities located therein.

Utah Power, in May 1958, acquired ownership of all outstanding Capital Stock of Telluride. This acquisition of Capital Stock included 750,525 shares of 6% Cumulative Second Preferred Stock, acquired for cash at par value of $1 per share, and included 582,337 shares of Common Stock, par value $1 per share, acquired by the exchange of one share of Utah Power's Common Stock for each eleven shares of Telluride's Common Stock. Utah Power's acquisition of Telluride's entire Capital Stock was authorized by the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935. Utah Power, in 1960, purchased 300,000 additional shares of Telluride's Common Stock for cash in the amount of $675,000.

Utah Power and Telluride, on December 20, 1961, adopted a plan of liquidation of Telluride, which provides, in substance, as follows: Utah Power will make a capital contribution of about $2,085,000 to Telluride to enable Telluride to retire all of its outstanding First Mortgage Bonds in the total principal amount of $2,015,000; Utah Power will forgive Telluride's outstanding notes in the principal amount of $1,900,000, payable to Utah Power; and Telluride will be merged into Utah Power and Telluride will be dissolved. In the merger, Utah Power will record all of Telluride's assets and other debits and will record all of its remaining liabilities and other credits, including the increase in Telluride's Earned Surplus from the 1958 acquisition of Telluride's Common Stock to the date of the consummation of the merger. This increase in Earned Surplus represents retained earnings. Utah Power, as of December 31, 1961, would have credited its Earned Surplus account with $577,613 for Telluride's retained earnings.

In Utah Power's 1958 acquisition of Telluride's Common Stock, the market value of Utah Power's Common Stock exchanged for Telluride's Common Stock exceeded the net book value of Telluride's property and other assets by $454,419. In the merger of Telluride into Utah Power, this excess of $454,419 will be classified as an acquisition adjustment and will be recorded on Utah Power's books as a debit to Account 114, Electric Plant Acquisition Adjustments.

In the merger, Utah Power will also record in Account 114, Electric Plant Acquisition Adjustments, a credit balance of $20,572, now on the books of Telluride. The net amount of acquisition adjustments on Utah Power's books, therefore, will be $433,847. This amount being the difference between $454,419 re-

ferred to above and Telluride's existing credit balance of $20,572. Utah Power has agreed to amortize the net amount of $433,847 over a period of five years by charges to Account 425, Miscellaneous Amortization.

After consummation of the proposed transaction, according to the application, Utah Power will operate the facilities acquired from Telluride as an integral part of its electrical system, centralizing and integrating functions such as engineering, construction, system operations, customer accounting and billing, and other functions under more modern methods—all of which will provide for better services, more economical operations and will be in the public interest. In addition, Utah Power will apply its rates to the newly acquired facilities. Although an increase in such rates has recently been authorized by the Utah Commission, the increased rates, as applied to the newly acquired facilities, will provide lower rates to the present Telluride customers.

Written notice of the application has been given to the Public Service Commission of Utah, the Idaho Public Utilities Commission and the Public Service Commission of Wyoming, and to the Governor of each of those States. Notice of the application was also published in the Federal Register on April 18, 1962 (27 F.R. 3706), stating that any person desiring to be heard or to make any protest with reference to said application should, on or before the 7th day of May, 1962, file with the Federal Power Commission, Washington 25, D.C., petitions or protests. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Public Service Commission of Utah, by order issued December 27, 1962, approved the transactions proposed by Utah Power herein.

Utah Power is a holding company registered under the Public Utility Holding Company Act of 1935. Inasmuch as the acquisition of facilities proposed herein is subject to the approval of a State commission such acquisition is exempted from the provisions of the aforesaid Act by virtue of Section 9(b)1 thereof. Telluride presently owns and operates license projects Nos. 814, 994. In a separate order issued concurrently herewith, the transfer of the licenses for certain facilities from Telluride to Utah Power is approved.

The Commission finds:

(1) Utah Power, a corporation organized and existing under the laws of the State of Maine, owns and operates facilities, among others, for the transmission and sale at wholesale of electric energy which is transmitted between the States of Idaho and Montana, between the States of Idaho and Utah, from Idaho to Wyoming, and from Wyoming to Utah for consumption outside of the State in which it is generated and for the transmission of electric energy from Utah to Wyoming for consumption outside of the State in which it is generated—all of which facilities are in addition to, and do not include, facilities used for the generation of electric energy, facilities used in local distribution or only for the transmission of electric energy consumed wholly by the transmitter, and Utah Power is, therefore, a public utility within the meaning of that term as used in Section 203 of the Federal Power Act.

(2) By the proposed transaction, as described above, Utah Power will acquire and merge or consolidate with its facilities, subject to the jurisdiction of the Commission all of the facilities of Telluride, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of Telluride's electric facilities by Utah Power, as described above, upon the terms and conditions specified in the application and subject to the provisions of this order, will be consistent with the public interest, as expressed in Section 203 of the Act, for the reasons set forth in the recital above.

The Commission orders:

(A) The proposed acquisition and merger or consolidation of the facilities of Telluride by Utah Power, as described above, is hereby authorized and approved upon the terms and conditions set forth in the application, subject to the provisions of this order.

(B) Utah Power shall record the transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees. Utah Power shall dispose of the Electric Plant Acquisition Adjustment resulting from the proposed transaction by charges to Account 425, Miscellaneous Amortization over a period of five years.

(C) This authorization shall expire unless the transaction herein authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP63-14

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 22, 1963)

On July 16, 1962, as supplemented on July 30, 1962, and September 17, 1962, Florida Gas Transmission Company (Applicant) filed in Docket No. CP63-14 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the sale and delivery of natural gas to Geneva County Gas District (District) for resale and distribution by the latter in the communities of Geneva, Hartford, Samson and Slocomb, in Geneva County, Alabama, all as more fully set forth in the application, as supplemented.

Applicant proposes to construct and operate the necessary related gas metering and regulating facilities on its 24-inch transmission line at a point near the county line between Homes and Walton Counties, Florida. The proposed facilities are estimated to cost $15,300, which cost will be financed from cash on hand.

The estimated third year peak day and annual natural gas requirements of District are 4,527 Mcf and 262,629 Mcf, respectively.

District proposes to construct and operate a gas transmission line and the necessary distribution facilities for the four communities to be served. The estimated cost of these facilities is $1,900,000.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 8, 1963, respecting the matters involved in and the issues presented by the application, as supplemented, herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Florida Gas Transmission Company, a Delaware corporation having its principal place of business in Winter Park, Florida, is a "natural-gas

company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1956, in Docket Nos. G–9262 and G–9960 (16 FPC 118).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Florida Gas Transmission Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application, as supplemented, herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sales of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

CAROLINA POWER & LIGHT COMPANY, DOCKET NO. E–7078

ORDER TO SHOW CAUSE AND PROVIDING FOR HEARING

(Issued January 23, 1963)

Carolina Power & Light Company (Carolina Power), Raleigh, North Carolina, incorporated under the laws of the State of North Carolina, conducts

utility operations both at wholesale for resale and at retail in the States of North Carolina and South Carolina. Operating data in Carolina Power's 1961 FPC Form No. 1, Annul Report, and 1961 FPC Form 12, Power System Statement, shows that electric energy transmitted and sold at wholesale for resale and at retail on its system is generated outside the state in which it is consumed. Carolina Power owns and operates interconnected electric production and transmission facilities in the States of North Carolina and South Carolina, which facilities are also interconnected with electric facilities of Appalachian Power Company, Duke Power Company, South Carolina Electric and Gas Company, Southeastern Power Administration, Tennessee Valley Authority, Virginia Electric and Power Company, and Yadkin, Inc. Carolina Power regularly transmits or interchanges electric power and energy with each of these seven utility systems.

Carolina Power reports that it currently provides electric energy service at wholesale for resale to 39 purchasers for which it has no established rate schedules on file with this Commission. These purchasers are as follows: Mountain Retreat Association, Apex, Benson, Clayton, Farmville, Fayetteville, Fremont, Hookerton, Kinston, La Grange, Louisburg, New Bern, Pikeville, Red Springs, Rocky Mount, Selma, Smithfield, Southport, Wake Forest, Waynesville, and Wilson, North Carolina, Camden, South Carolina, Brunswick Electric Membership Corporation, Carteret-Craven EMC, Central EMC, Four-County EMC, Halifax EMC, Jones-Onslow EMC, Lumbee River EMC, Pamlico-Beaufort EMC, Pee Dee EMC, Piedmont EMC, Pitt-Greene EMC, Randolph EMC, South River EMC, Tri-County EMC, Wake EMC, Haywood EMC, and Harker's Island EMC. Carolina Power's Annual Report for 1961 shows that its wholesale sales to these purchasers totalled 1,083,958,366 kwh.* Its total wholesale sales for resale to all purchasers during 1961 were 1,238,882,438 kwh.*

Carolina Power currently has on file with this Commission the following rate schedules: Rate Schedule FPC Nos. 3 and 11, Tennessee Valley Authority; Rate Schedule FPC No. 7 and Supplement Nos. 1 (and Supplement No. 1 thereto) and 2 thereto, Rate Schedule FPC No. 8 and Supplement No. 1 thereto, Virginia Electric and Power Company; Rate Schedule FPC No. 10 and Supplement Nos. 1 and 2 thereto, Rate Schedule FPC Nos. 43 and 46, Yadkin, Inc.; Rate Schedule FPC No. 14, Laurel Hill Electric Company, Inc.; Rate Schedule FPC No. 17, Pinehurst, Incorporated; Rate Schedule FPC No. 19, French Broad Electric Membership Corporation; Rate Schedule FPC No. 23, Bennettsville, South Carolina; Rate Schedule FPC No. 25, Laurinburg, North Carolina; Rate Schedule FPC No. 29, Lumberton, North Carolina; Rate Schedule FPC No. 33, South Carolina Public Service Authority; Rate Schedule FPC Nos. 36 and 37, Housing Authority of Wilmington, North Carolina; Rate Schedule FPC Nos. 38, 39, 40, and 41, Federal Works Administration; Rate Schedule FPC No. 42, Southeastern Power Administration; Rate Schedule FPC No. 44, including Exhibit "A", and Supplement No. 1 thereto, Appalachian Power Company; and Rate Schedule FPC No. 45 and Supplement No. 1 thereto, Duke Power Company.

By order issued January 31, 1957 (17 FPC 83), *Carolina Aluminum Co., Carolina Power and Light Co.*, Docket No. E-6712, the Commission found Carolina Power to be a public utility within the meaning of that term as used in the Federal Power Act by reason of its ownership and operation of facilities, among others, for the transmission and sale at wholesale of electric energy which is transmitted between the States of North Carolina, South Carolina, Tennessee and Virginia, and consumed outside of the State in which it is generated.

*Does not include energy reported as delivered under interchange or wheeling arrangements.

By letter dated August 3, 1962, the foregoing information concerning unfiled rate schedules of Carolina Power was brought to the Company's attention by means of a staff request that the Company take appropriate action to establish rate schedules for the wholesale sales to the above-named 39 purchasers pursuant to the requirements of Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder. By letter dated August 17, 1962, Carolina Power requested an extension of time in which to file the rate schedules in question, and later by letter dated October 25, 1962, submitted certain data regarding these services for the information of the Commission but declined to undertake the filing of the rate schedules as requested by the staff. Carolina Power asserted that such sales do not appear to be subject to this Commission's jurisdiction under Section 205 of the Federal Power Act.

The Commission finds:

In view of the foregoing, it is necessary and appropriate for the purposes of the Federal Power Act that the Commission, pursuant to the authority of that Act, particularly Sections 205, 206, 308, and 309 thereof, enter upon a hearing at which Carolina Power shall show cause why the Commission should not find that the sales at wholesale for resale to the 39 purchasers referred to in the recital above are sales at wholesale in interstate commerce subject to the jurisdiction of this Commission under the provisions of the Federal Power Act for which Carolina Power must file appropriate rate schedules in the manner provided in Part 35 of the Commission's Regulations under the Federal Power Act.

The Commission orders:

(A) A public hearing shall be held at a time and place to be specified by notice of the Secretary at which Carolina Power shall show cause why the Commission should not:

(1) find and determine that Carolina Power continues to be a public utility within the meaning of that term as used in the Federal Power Act by reason of its ownership and operation of facilities for the transmission and sale at wholesale of electric energy in interstate commerce;

(2) find and determine that in each instance Carolina Power's sales to the 39 purchasers referred to in the recital above are sales at wholesale in interstate commerce, subject to the provisions of Sections 205 and 206 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder;

(3) find and determine that at least since January, 1961, Carolina Power has been violating and threatens to continue violating the provisions of Section 205(c) of the Act and Part 35.3 of the Commission's Regulations thereunder;

(4) order Carolina Power to file rate schedules for service to the 39 purchasers referred to in the recital above in accordance with the provisions and requirements of Section 205(c) of the Act and Part 35.3 of the Commission's Regulations thereunder; and

(5) issue such other orders and take such other actions as may be necessary or appropriate to bring about compliance with the Federal Power Act and the Commission's Regulations thereunder.

(B) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37) on or before March 1, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. RP62-9

ORDER GRANTING MOTION TO TERMINATE PROCEEDING

(Issued January 24, 1963)

Colorado Interstate Gas Company (Interstate) on November 28, 1962,[1] filed a motion requesting the dismissal and termination of this proceeding. This proceeding was initiated following Interstate's tender for filing of tariff sheets which would modify the provisions for unauthorized overrun penalties by providing for waiver of such penalties by Interstate under certain conditions. By order issued June 13, 1962, the Commission provided for hearing and suspended the tendered tariff sheets.[2] Thereafter, upon motion of the Public Utilities Commission of Colorado (PUC) and motions in support thereof filed by Interstate and the City and County of Denver, Colorado (Denver), by order issued September 24, 1962, the Commission permitted the tendered tariff sheets to become effective as of January 1, 1962.

The latter order also indicated the possible existence of a question of general policy and applicability respecting which other parties may desire to present their views. Thereafter, a number of pipeline companies and several distribution companies, which do not directly or indirectly receive gas from Interstate filed petitions to intervene. Five of the distribution customers receiving gas directly or indirectly from Interstate also filed petitions to intervene. No order has as yet been issued herein upon petitions to intervene.

Interstate's motion for dismissal of this proceeding, alternatively, requests the Commission to limit the issue to be heard to the waiver of overrun penalties issue which was initially prescribed by the Commission's order issued June 13, 1962. Interstate's motion to dismiss and its alternative motion are supported by motions filed by all of those parties petitioning to intervene who are directly affected by Interstate's proposed tariff modification. Interstate's alternative motion to limit the issues to the waiver provision is supported by motions filed by all of the parties petitioning to intervene who are not directly affected by Interstate's tariff.

In support of the aforementioned requests the various motions state, among other things, that Interstate's customers specifically requested the inclusion of waiver of penalty provisions in Interstate's tariff; no undue discrimination or unilateral advantage either has occurred or will be reasonably likely to occur in the foreseeable future with respect to waiver of overrun penalties; the unauthorized overruns which occurred during the winter of 1961–1962 were undoubtedly due to the inexperience of four customers in nominating contract demands under the new tariff provisions and to the abnormally cold winter peak day requirements; these four customers and one other have negotiated increased contract demands substantially to a level consistent with peaks reached last winter during abnormally low temperatures;[3] and with a fully committed capacity as now exists on its system, Interstate's operations do not have sufficient diversity to render them flexible enough to permit a customer in nominating its contract demand to anticipate exceeding such demand without

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[1] Supplement to motion filed November 30, 1962.

[2] Original Sheet Nos. 8A and 11A; First Revised Sheet Nos. 5 and 8; and Second Revised Sheet Nos. 6, 10, and 11, to Interstate's FPC Gas Tariff, First Revised Volume No. 1.

[3] The Commission, by order of October 30, 1962, and by letter of December 21, 1962, accepted new service agreements which reflect increased contract demands of five of CIG's customers.

adversely affecting another customer and thereby subjecting itself to penalties under the tariff.

Upon reconsideration of our orders and after review of the various motions and the allegations therein set forth, we find that this proceeding should be terminated. That action is not intended to suggest that there is no problem concerning the opportunities for unilateral advantage or arbitrary practice that are presented by tariffs providing for unrealistic penalties and discretionary waivers. It appears, however, that this proceeding may not be the right vehicle to provide a solution to that problem. We propose therefore, to consider this problem at some later date in an appropriate general proceeding.

The Commission orders:

The proceedings instituted in this docket by our orders issued June 13 and September 24, 1962, hereby are terminated.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP63-67

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 24, 1963)

On September 17, 1962, El Paso Natural Gas Company (Applicant) filed in Docket No. CP63-67 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction of small scale routine "budget-type" facilities during the calendar year 1963, the operation thereof, and the sale and delivery of natural gas by use thereof, and the sale and delivery of natural gas by use of facilities constructed, owned, and operated by Pacific Gas Transmission Company (PGT)[1], to Applicant's existing authorized resale customers for resale and general distribution, and for resale on a limited-term project basis for well drilling operations, all as more fully set forth in the application.

A. FACILITIES REQUIRED FOR NATURAL GAS SERVICE TO CUSTOMERS FOR RESALE AND GENERAL DISTRIBUTION

1. A total of thirty (30) main line taps, together with standard appurtenances necessary for the operation thereof, to be installed at various locations along the transmission pipelines of El Paso at an estimated cost of $400 for each installation and an aggregate cost not to exceed a maximum of $12,000.

2. A total of twenty-five (25) main line measuring and regulating and/or check metering stations to be installed at various locations along the transmission pipeline system of El Paso or adjacent to the transmission pipeline system of PGT, together with main line tap facilities to be installed on the

[1] PGT, under authority issued in Docket No. G-17350, will transport for the account of El Paso natural gas to be purchased by El Paso from Westcoast Transmission Company at Kingsgate, British Columbia. Deliveries of gas so transported will be made by PGT to El Paso at the delivery points, authorized in Docket No. CP62-59, specified by El Paso along PGT's pipeline in the States of Idaho, Washington and Oregon. At each point of delivery to El Paso, PGT will install, own and operate a transportation measuring station. Where the point of delivery by El Paso to its customers is adjacent to PGT's measuring facilities and El Paso's customers agree to accept, for billing purposes, the volumes as measured by PGT's measuring facilities, El Paso does not propose to install facilities additional to those installed by PGT.

transmission pipelines of El Paso as necessary, at an estimated cost of $2,000 to $8,000 for each installation and an aggregate cost not to exceed a maximum of $175,000.

3. A total of three (3) lateral pipelines of not less than 2⅜ inches nor more than 6⅝ inches in outside diameter together with, as necessary, related main line taps, measuring and regulating and/or check metering stations and the standard appurtenances necessary for the operation thereof to be installed at various locations along and extending from either the transmission pipelines of Applicant or the pipeline system of PGT, at an estimated cost not to exceed $350,000 for each installation and an aggregate cost not to exceed a maximum of $1,050,000.

B. FACILITIES REQUIRED FOR NATURAL GAS SERVICE TO CUSTOMERS FOR RESALE DRILLING GAS SERVICE

1. Main line or field line tap facilities, together with standard appurtenances necessary for the operation thereof, to be installed at up to a total of fifteen (15) separate locations, at an estimated cost of $400 for each installation and an aggregate cost not to exceed a maximum of $6,000.

2. Portable measuring and regulating facilities, together with standard appurtenances necessary for the operation thereof, to be installed at up to a total of fifteen (15) main line or field line tap locations, at an estimated cost of $1,200 for each installation and an aggregate cost not to exceed a maximum of $18,000.

The sale and delivery of natural gas to be made by utilization of the facilities described in Item A above is estimated to range from 50 Mcf per day to 500 Mcf per day per tap, from 50 Mcf per day to 5,000 Mcf per day per meter station and from 50 Mcf per day to 5,000 Mcf per day per lateral line with an annual volume to be delivered through all such facilities not to exceed 9,450,000 Mcf during the third year of operation, all measured at 14.73 psia.

The sale and delivery of natural gas to be made by utilization of the facilities described in Item B above is of a limited term and is estimated to range in volume from 200 Mcf to 3,000 Mcf per day well and the normal duration of drilling operations for each such well is anticipated to range from 30 to 90 days with an annual volume to be delivered through all of such facilities not to exceed 300,000 Mcf. The measuring and regulating facilities will be of a portable nature and may thus be utilized at successive locations following their removal from a prior drilling gas tap location.

The estimated maximum cost of all facilities for which certificate authority is sought by El Paso is $1,261,000. No increase in main line capacity is proposed by El Paso and rates and charges for all sales and deliveries made will be in conformity with rate schedules on file with the Commission.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 9, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Com-

mission in its order of October 29, 1942, in Docket Nos. G–242 and G–257 (3 FPC 851).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities during the calendar year 1963 and the transportation and sale of natural gas as proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days from the expiration of the authorization hereinafter granted, a statement showing by project: (a) names and locations of customers, (b) description of facilities, (c) actual final cost, (d) annual and peak day volumes for each customer, (e) applicable FPC gas tariff and rate schedule for each customer, and (f) with regard to the facilities and sales for drilling operations, the revenues received from, together with the commencement and termination dates of service to, each customer.

(7) Under the authorization hereinafter granted construction should be limited to 30 main line taps not to exceed a total cost of $12,000; 25 meter stations not to exceed a total cost of $175,000; 3 lateral pipelines up to 6⅝ inches O.D. at a total cost not to exceed $1,050,000, with no single lateral to exceed a cost of $350,000; 15 main or field taps for well drilling purposes not to exceed a total cost of $6,000; 15 portable meter stations for well drilling purposes not to exceed a total cost of $18,000; all for the purpose of delivering gas to Applicant's existing authorized customers under its applicable FPC Gas Tariff, providing that such customers have the necessary local and state authorizations.

(8) Deliveries for general distribution should be limited to a maximum of 500 Mcf per day per tap, 5,000 Mcf per day per meter station and 5,000 Mcf per day per lateral pipeline, with an annual aggregate for all such facilities not to exceed 9,450,000 Mcf. The volume delivered for well drilling operations should not exceed 3,000 Mcf per day per well with a total annual volume not to exceed 300,000 Mcf.

(9) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order a certificate of public convenience and necessity be and the same is hereby issued authorizing El Paso Natural Gas Company to construct during the calendar year 1963 the proposed

facilities hereinbefore described all as more fully described in the application in this proceeding, and to operate such facilities for the transportation and sale of natural gas to supply existing authorized resale customers with natural gas and to sell and deliver natural gas to existing authorized resale customers for resale and distribution by use of the facilities owned by Pacific Gas Transmission Company.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit within 60 days after the expiration of the authorization hereinbefore granted, a statement showing by project: (a) names and locations of customers, (b) description of facilities, (c) actual final cost, (d) annual and peak day volumes for each customer, (e) applicable FPC gas tariff and rate schedule for each customer, and (f) with regard to facilities and sales for drilling operations, the revenues collected from, together with the commencement and termination dates of service to, each customer.

(D) The authorization hereinbefore granted is limited to construction of 30 main line taps not to exceed a total cost of $12,000; 25 meter stations not to exceed a total cost of $175,000; 3 lateral pipelines up to 6⅝ inches O.D. at a total cost not to exceed $1,050,000, with no single lateral to exceed a cost of $350,000; 15 main or field taps for well drilling purposes not to exceed a total cost of $6,000; 15 portable meter stations for well drilling purposes not to exceed a total cost of $18,000; all for the purpose of delivering gas only to Applicant's existing authorized resale customers under its applicable FPC Gas Tariff, providing that such customers have the necessary local and state authorizations.

(E) Deliveries for general distribution shall be limited to a maximum of 500 Mcf per day per tap, 5,000 Mcf per day per meter station and 5,000 Mcf per day per lateral pipeline, with an annual aggregate for all such facilities not to exceed 9,450,000 Mcf. The volumes delivered for well drilling operations shall not exceed 3,000 Mcf per day per well with a total annual volume not to exceed 300,000 Mcf.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-42

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 24, 1963)

On August 15, 1962, Northern Natural Gas Company (Applicant) filed in Docket No. CP63-42 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1963 and the operation of measuring and regulating stations for the establishment of new and additional delivery points for delivery of natural gas to existing utility customers, without any increase in contract demand, for resale in areas which said customers are authorized to serve, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in establishing new and additional delivery points for the delivery of natural gas to existing customers without the necessity of

filing an application for a certificate of public convenience and necessity for each facility.

The total cost of the proposed facilities will not exceed a maximum of $200,000, and no single project will exceed a cost of $18,000. The subject facilities will be financed from cash on hand and funds generated through operations.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 8, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities for the establishment of new and additional delivery points for the delivery of natural gas to existing utility customers, without any increase in contract demand, for resale in areas which said customers are authorized to serve, are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days from the date of expiration of the authorization hereinafter granted, a statement showing by projects: (a) the names and locations of customers receiving deliveries by means of each new delivery point constructed, (b) a description of the facilities installed, (c) actual final costs of such facilities, (d) estimated peak day and annual deliveries through said facilities, and (e) the rate to be charged each customer at the proposed new delivery point.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $200,000, with no single project to exceed a cost of $18,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Northern Natural Gas Company to construct during the calendar year 1963 the facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to deliver natural gas to or for the account of existing utility customers, without any increase in contract demand, for resale in areas which said customers are authorized to serve.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit within 60 days from the date of expiration of the authorization hereinbefore granted, a statement showing by projects: (a) names and location of customers receiving deliveries by means of each new delivery point constructed, (b) a description of the facilities installed, (c) actual final costs of such facilities, (d) estimated peak day and annual deliveries through said facilities, and (e) the rate to be charged each customer at the proposed new delivery point.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $200,000, with no single project to exceed a cost of $18,000.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP63-35

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 24, 1963)

On July 31, 1962, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP63-35 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the transportation and sale of natural gas for and to Gulf Oil Corporation (Gulf), all as more fully set forth in the application.

Applicant seeks authorization to:

(1) transport, on a high priority interruptible basis, for the account of Gulf, up to 6000 Mcf of natural gas per day produced by Gulf, from a point of receipt in Claiborne Parish, Louisiana, to a proposed point of delivery to Gulf in Hamilton County, Ohio;

(2) sell to Gulf, on an interruptible basis, up to 5000 Mcf of natural gas per day at the proposed Hamilton County delivery point during the period when Gulf is drilling the wells necessary to supply the daily delivery volumes to be transported by Applicant; and

(3) construct and operate a meter station at the proposed point of delivery at a cost of $4,470.

The volumes of gas proposed to be transported for, and sold to, Gulf will be used by Gulf as fuel in its Cleves, Ohio, refinery following the completion of

an extensive modernization of the refinery. The gas will displace oil as fuel in the refinery.

Applicant was issued a temporary certificate on September 6, 1962, to undertake the subject construction and service.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 8, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Texas corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of March 30, 1949, in Docket No. G–859 (8 FPC 228).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the transportation and delivery of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Texas Gas Transmission Corporation, to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP63-98

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued January 24, 1963)

On October 17, 1962, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP63-98 an application pursuant to Section 7(b) of the Natural Gas Act, for authority to abandon certain facilities consisting of approximately 545 feet of 8 inch lateral pipeline running from its Ashmead Road Meter Station in Cheltenham Township, Montgomery County, Pennsylvania to the Levick Street facilities of Philadelphia Gas Works Division of the United Gas Improvement Company at the City Limits of Philadelphia, known as the, "Ashmead Road Lateral." The said stretch of pipeline, except for a short length thereof is now not being used because the United Gas Improvement Company is taking the gas from Applicant through its own pipeline from the Ashmead Road Meter Station to a point near the Levick Street facilities.

Applicant has negotiated a sale of the 545 feet of pipeline above described to the United Gas Improvement Company for $3,163.68.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 14, 1963, respecting the matters involved in and the issues presented by the application. No petition to intervene or protest to the granting of the application has been received. Staff Counsel, moved orally at the hearing that the intermediate decision procedure be omitted and the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a natural gas company within the meaning of the Natural Gas Act and the facilities are described in the application as being subject to the jurisdiction of the Commission.

(2) The use of the stretch of pipeline sought to be abandoned by Applicant is now discontinued due to the construction and use of other facilities by The United Gas Improvement Company to maintain the same service previously rendered by Applicant's facilities. The public convenience and necessity does not require such duplicate facilities.

(3) The sale by the Applicant of the facilities described herein to The United Gas Improvement Company has been agreed upon by the parties.

(4) A request made during the public hearing by Staff Counsel for the omission of the intermediate decision procedure under Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure was unopposed by any party of record, and not having been denied by the Commission is granted pursuant to Section 1.30(c)(1) of the said rules.

The Commission orders:

(A) Applicant be and is hereby permitted to abandon the facilities heretofore described, as more fully described in the application.

(B) Applicant shall advise the Commission as to the date of settlement of sale of the said facilities within 10 days thereafter.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

TRUNKLINE GAS COMPANY, DOCKET NO. CP63-40

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 24, 1963)

On August 14, 1962, as supplemented on August 27, 1962, Trunkline Gas Company (Applicant) filed in Docket No. CP63-40 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the transportation of natural gas in interstate commerce for sale to Missouri Portland Cement Company (Missouri Portland), Joppa, Massac County, Illinois, all as more fully set forth in the application.

Applicant seeks authorization to construct and operate a sales meter station and connections necessary for the delivery of natural gas from Applicant's main line to said sales meter station. Applicant also seeks authorization to transport natural gas in interstate commerce for an interruptible sale to Missouri Portland of 2,000 Mcf of gas per day. Applicant estimates that the average annual sales will be 175,000 Mcf of gas per year. The gas will be used for raw material drying and space heating.

The estimated cost of the proposed facilities is $28,500, to be financed from funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 10, 1963, respecting the matters involved in and the issues presented by the application, as supplemented, herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G-882 (8 FPC 250).

(2) The facilities herein before described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the delivery of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act

and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Trunkline Gas Company, authorizing the construction and operation of the proposed facilities and the delivery of natural gas as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP63-10

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued January 24, 1963)

On July 12, 1962, as supplemented on August 29, 1962, United Gas Pipe Line Company (Applicant) filed in Docket No. CP63-10 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval of the Commission to abandon the 2,560 h.p. Waskom No. 2 Compressor Station in Harrison County, Texas, all as more fully set forth in the application as supplemented.

The Waskom No. 2 Compressor Station was constructed in 1927 and 1928 as a field station to compress gas from the Waskom Area. The station was continued in operation until depletion of known shallow reservoirs in the field and has been held in readiness since 1946 in the event that any additional gas developed in the area. Applicant does not foresee any future development of shallow reservoirs in this field which will require use of the compressor station at its present location and therefore requests permission and approval for the abandonment of said facilities.

The original cost of the facilities was $282,408.53; the depreciated cost is $16,524; and the net salvage is estimated at $2,500.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 10, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) The facilities proposed to be abandoned as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, are subject to the jurisdiction of the Commission, and the abandonment of said facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonment by Applicant as hereinbefore described is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

(4) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant, United Gas Pipe Line Company, of the facilities hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of the subject abandonment within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP63–46

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 24, 1963)

On August 20, 1962, United Gas Pipe Line Company (Applicant) filed in Docket No. CP63–46 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1963 and operation of facilities to render temporary direct service for road construction projects in areas generally coextensive with Applicant's pipeline system, all as more fully set forth in the application.

The purpose of this "budget-type" application is to permit Applicant to act with reasonable dispatch in establishing temporary, relatively low cost, delivery points without the delay incident to the processing of individual certificate applications.

Applicant anticipates approximately 25 projects at an individual cost not to exceed $800 per project and states that the average customer uses approximately 14,000 Mcf of natural gas.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 9, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting

of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Ast as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities to render temporary direct service for road construction projects in areas generally co-extensive with Applicant's system are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization hereinafter granted, a statement showing by project: (a) name and location of customer served, (b) description of facilities installed, (c) gross and net cost reflecting cost of salvaged facilities, (d) estimated date of termination of service, and (e) actual and estimated sales and revenue.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1963, and the total number of sales shall be limited to 25 with maximum expenditure not to exceed $20,000, and no single project to exceed a cost of $800.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing United Gas Pipe Line Company to construct during the calendar year 1963 the facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to render temporary direct service for road construction projects to 25 customers in areas generally co-extensive with Applicant's pipeline system.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit within 60 days after the expiration of the authorization herein granted, a statement showing by project: (a) name and location of customer served, (b) description of facilities installed, (c) gross and net cost reflecting cost of salvaged facilities, (d) estimated date of termination of service, and (e) actual and estimated sales and revenue.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $20,000, with no single project to exceed a cost of $800.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

VALLEY GAS TRANSMISSION, INC., DOCKET NO. CP63-93

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 24, 1963)

On October 11, 1962, as supplemented on November 2, 1962, Valley Gas Transmission, Inc. (Applicant), filed in Docket No. CP63-93 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during a 12-month period, and the operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $500,000, and no single project will exceed a cost of $50,000. The proposed facilities will be financed from funds on hand, cash generated from normal operations, and financing already arranged.

On December 6, 1962, Applicant was granted a temporary certificate authorizing the construction and operation of facilities to connect a well of the Superior Oil Company in Duval County, Texas, at a cost not to exceed $50,000.

Applicant requests that the Commission waive Section 2.58(a) of its General Policy and Interpretations in order that Applicant may be afforded greater flexibility necessary to attach reserves without the delays resulting from the processing of individual certificate applications. In view of the size and nature of Applicant's operations, it appears appropriate to waive Section 2.58(a) in this case.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 8, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Valley Gas Transmission, Inc., a Texas corporation having its principal place of business in Houston, Texas, is a "natural-gas company"

within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 29, 1960, in Docket No. G–19618 (25 FPC 233).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities to take natural gas purchased from producers thereof as proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization hereinafter granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization hereinafter granted, (d) location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the requirements of Section 2.58(a) of the Commission's General Policy and Interpretations should be waived and that the authorization hereinafter granted should be limited to construction during the 12-month period commencing on the date on which this order issues, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $500,000, with no single project to exceed a cost of $50,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Valley Gas Transmission, Inc., to construct during the 12-month period commencing on the date on which this order issues the proposed facilities hereinbefore described as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Valley Gas Transmission, Inc.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(D) The requirements of Section 2.58(a) of the Commission's General Policy and Interpretation are hereby waived and the authorization granted in paragraph (A) above is hereby limited to construction during the 12-month period commencing on the date on which this order issues, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $500,000, with no single project to exceed a cost of $50,000.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

CAROLINA PIPELINE COMPANY, COMPLAINANT v. SOUTHERN NATURAL GAS COMPANY, DEFENDANT, DOCKET NO. RP63-4

ORDER PROVIDING FOR HEARING, DESIGNATING PROCEDURE AND FIXING DATE FOR PREHEARING CONFERENCE

(Issued January 25, 1963)

On September 6, 1962, Carolina Pipeline Company (Carolina) filed a formal complaint naming one of its suppliers, Southern Natural Gas Company (Southern) as defendant. Therein Carolina, among other things, prays for a hearing; for an order directing Southern to cease and desist from discrimination against Carolina; for an order directing Southern to furnish CD service to Carolina and for such other and further relief as may be warranted in the premises. The action is filed under Sections 4(b) and 5(a) of the Natural Gas Act.

Carolina operates a natural gas pipeline system entirely within the State of South Carolina and has been exempted from the provisions of the Act under Section 1(c) thereof. The western portion of Carolina's facilities is not involved in this proceeding. The portion involved herein constitutes a V-shaped system of pipelines lying across the state in an east-west direction with its apex toward the sea. The northern leg terminates at a delivery point close to the North Carolina border while the southern leg extends to a delivery point near the border of Georgia, at Aiken, South Carolina.

Transcontinental Gas Pipe Line Corporation (Transco) is authorized to deliver approximately 25,000 Mcf of gas per day to Carolina on the northern leg,

while Southern is authorized to deliver at present approximately 7,500 Mcf per day to Carolina at Aiken on the southern leg.[1]

Southern commenced deliveries to Carolina at Aiken, South Carolina on October 26, 1961, pursuant to a certificate issued to Southern (25 FPC 518) under Southern's CDL–3 and its AOL–3 rate schedules.

The complaint alleges, among other things, (1) that Southern's CDL–AOL rate schedules under which Carolina purchases gas, permits discrimination and that in consequence thereof, Southern is enabled to effect undue discrimination against Carolina in deliveries of overrun gas; (2) that the language of the rate schedules is unduly discriminatory in several respects; that, for example, the word "pipeline" works to give preference to customers of Southern who have only one source of supply; (3) that this prevents their accepting gas from potential alternate sources of supply and consequently restricts competition; (4) that because in one period, 35 percent of available overrun gas went to one "pipeline" CD customer, namely, South Carolina Natural Gas Company for use as boiler fuel, Carolina had to curtail its service to small industrial customers, schools and hospitals; (5) that CD customers are permitted to take unlimited overruns until notified by Southern to limit the takes to their contracts, while CDL–AOL customers such as the complainant, can obtain overrun gas only after Southern notifies them that overruns are available; (6) that by reason of the CDL–AOL rate schedules and the manner in which Southern operates, CD customers are protected against undue discrimination while Carolina is subject to it in numerous ways.

Southern filed its answer to the foregoing complaint on October 8, 1962, setting forth what amounts to a general denial of undue discrimination, and also submitted certain allegations of fact and argument. Among other features of its answer, Southern appears to hold the view that the two parties bargained and contracted for what they obtained and that having so contracted, the Commission's past acceptance of the rate schedules established a relationship which should not be disturbed, nor made the subject of a public hearing.

Carolina filed its reply on October 23, 1962, alleging, among other things, that Southern specifically admits that the CDL–AOL rate schedules are discriminatory and furthermore, that there was no way for the Examiner who sanctioned them to know that they would be used by Southern as a means of effecting undue discrimination; further, that the availability provision of Southern's rate schedules entitles Carolina to the CD Service which it demands.

The pleadings appear to leave unresolved some substantial questions of fact and law bearing upon (1) whether the rate schedules complained against are discriminatory; (2) whether the operations under them are discriminatory and (3) whether if discrimination exists, it is undue discrimination in violation of Section 4 or 5 of the Act. An additional issue may be whether there is evidence of probable violation of the Anti-Trust Laws and need for transmission of evidence to the Attorney General pursuant to Section 20(a) of the Natural Gas Act.

It appears that a public hearing should be held in order to afford all parties opportunity to present evidence concerning the issues herein; that Carolina bears the burden of proof and the obligation of going forward first in the presentation of its case-in-chief; that the issues herein should be determined with the greatest possible expedition and to that end, each party should have the opportunity to understand and evaluate the positions of the other parties; that the genuine disputes which can be resolved only in hearing should be listed; and that

[1] Southern F.P.C. Gas Tariff, Sixth Revised Vol. No. 1, substitute original sheets Nos. 29A through 29C and original sheets Nos. 29D through 29E.

all matters which can be fully resolved without formal trial should be eliminated from hearing and settled by stipulation.

For the purpose of expediting the proceeding, the Commission deems it appropriate that Carolina submit, within the time hereinafter fixed, its prepared testimony and exhibits pertaining to its direct case-in-chief; that thereafter within the time indicated below, Southern, if it elects to defend, submit the prepared testimony and exhibits of its direct case as defendant, together with a list which will identify those matters of fact and law wherein Southern takes issue with the contentions of Carolina; that thereafter, within the time indicated below, the Commission staff and all interveners proposing to submit evidence in this proceeding shall serve their prepared testimony and exhibits upon all parties.

Upon completion of the service of the testimony and exhibits, constituting the cases-in-chief of the complainant and defendant, the Presiding Examiner assigned to this proceeding shall convene a prehearing conference as herein after provided and at which he shall preside for the purposes of reaching a stipulation upon the issues which can be eliminated from hearing and of setting forth clearly the substantial matters to be resolved by formal hearing.

The Presiding Examiner shall then set the date for service by Carolina of its rebuttal case and issue immediate notice of the date of hearing on the issues to be tried; which when commenced shall be continuous and shall be directed to full cross-examination of all witnesses testifying with respect to the issues being tried, in accordance with the procedure prescribed by the Presiding Examiner.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the issues raised by the complaint filed by Carolina be determined by public hearing and that the proceeding be expedited in accordance with the procedures set out below.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Natural Gas Act, particularly Sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act (18 CFR, Chapter I), a public hearing be held concerning the matters involved and the issues presented in this proceeding.

(B) At the hearing herein, the complainant, Carolina, shall have the burden of proof and the obligation of going forward first with the presentation of its direct case-in-chief.

(C) Carolina, shall serve its prepared testimony and exhibits of its case-in-chief upon all parties, on or before February 18, 1963.

(D) The defendant, Southern, shall serve the prepared testimony and exhibits of its direct case upon all parties on or before March 11, 1963.

(E) The Commission staff and all other parties to this proceeding proposing to present evidence herein, shall serve the prepared testimony and exhibits of their direct cases on all parties on or before April 10, 1963.

(F) Presiding Examiner, Max L. Kane, or any other officer or officers of the Commission designated by the Chief Examiner for that purpose (see delegation of authority, 27 FR 4276, etc.) shall preside at the pre-hearing conferences and at the hearing in this matter, pursuant to the Commission's Rules of Practice and Procedure, and as further provided by this order.

(G) Without limitation upon the authority of the Presiding Examiner to convene pre-hearing conferences prior to, or subsequent to the date herein fixed,

pursuant to the provisions of Section 1.18 of the Commission's Rules of Practice and Procedure, a pre-hearing conference before the Presiding Examiner herein designated shall commence at 10:00 a.m. (EST) on March 25, 1963, in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., for the purpose of effectuating the intent of the Commission as hereinabove set out in the body of this order.

(J) Notices and petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the Commission's Rules of Practice and Procedure, Sections 1.8 and 1.37(f) [18 CFR 1.8 and 1.37(f)] on or before February 15, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

M. B. CHASTAIN (OPERATOR), ET AL.

ORDER ACCEPTING OFFER OF SETTLEMENT, AND PERMITTING WITHDRAWAL OF RATE FILING

(Issued January 25, 1963)

On December 31, 1962, M. B. Chastain (Operator) *et al.* (Chastain) tendered for filing a notice of change in its presently effective FPC Gas Rate Schedule No. 5, for the jurisdictional sale of natural gas to Texas Gas Transmission Corporation (Texas Gas) from the Carthage Field, Panola County, Texas (Railroad Commission District No. 6). Chastain has requested that the proposed redetermined rate increase, from the presently effective rate of 13.1456¢ per Mcf at 14.65 psia, to 14.764¢ per Mcf, including tax reimbursement, be made effective on January 1, 1963.

Concurrently with the filing of the proposed increased rate, Chastain filed an Offer of Settlement to settle the issues raised by its rate filing. Chastain proposes to withdraw its increased rate filing if the Offer of Settlement is accepted. Under the terms of the offer, the price redetermination clause is to be eliminated from the rate schedule involved, and a revised schedule of 1.0¢ per Mcf escalations, at five-year intervals beginning January 1, 1968, is to be substituted from the existing escalation provisions. It is proposed that a settlement rate of 14.6¢ per Mcf be established effective January 1, 1963.

In support of its offer, Chastain cites the deletion of the price redetermination provision from its gas purchase contract with Texas Gas, and states that such provision was in important element of consideration required by Chastain under the contract for the long-term commitment of its gas reserves to the performance of the contract. Texas Gas has concurred in the offer and has agreed to execute the contract amendment provided for therein.

Since the proposed settlement rate of 14.6¢ per Mcf at 14.65 psia is acceptable under the provisions of the Second Amendment[1] to the Commission's Statement of General Policy No. 61–1,[2] for jurisdictional sales of natural gas in Texas Railroad Commission District No. 6, it is believed that the public interest will best be served by accepting Chastain's proposed settlement as hereinafter set forth. The proposed settlement rate should be made effective January 31, 1963, upon expiration of the required statutory notice.

[1] Issued December 20, 1960, 24 FPC 1107.
[2] Issued September 28, 1960, 24 FPC 818 (18 CFR, Chapter I, Part 2, Section 2.56).

However, we desire to make it clear that acceptance of the Offer of Settlement shall not be construed as approval of any future increased rate proposed by Chastain under the periodic escalation provisions or otherwise.

The Commission finds:

The proposed settlement of the issues raised by Chastain's proposed increased rate filing, on the basis described herein, as more fully set forth in the Offer of Settlement filed by Chastain with the Commission on December 31, 1962, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved by the Commission and made effective as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by Chastain with the Commission on December 31, 1962 is hereby approved in accordance with the provisions of this order.

(B) Chastain shall file within 30 days from the date of issuance of this order a notice of change providing for the 14.6¢ per Mcf, inclusive of present tax reimbursement, specified in its Offer of Settlement and a contractual amendment to its FPC Gas Rate Schedule No. 5, which Chastain shall execute with Texas Gas in conformity with Chastain's Offer Settlement in all respects. Both the notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) The notice of chance in Chastain's FPC Gas Rate Schedule No. 5, tendered for filing on December 31, 1962, shall be considered withdrawn as of the date of issuance of this order, and upon notification by the Secretary of the Commission that Chastain has complied with the terms and conditions of this order, the rate and charge of 14.6¢ per Mcf, inclusive of present tax reimbursement, specified in the Offer of Settlement shall be effective as of January 31, 1963.

(D) The acceptance of this Offer of Settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending or hereafter instituted by or against Chastain.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. CP63–80

ORDER DENYING APPLICATION FOR REHEARING

(Issued January 25, 1963)

On January 16, 1963, George F. Toney, *et al.*[1] (Toney, *et al.*) filed in Docket No. CP63–80 an application for rehearing of the Commission's order issued January 11, 1963, *supra*, p. 64, in said docket. By that order, the Commission denied Toney, *et al.'s* petition of December 31, 1962, to intervene in this proceeding.

Toney, *et al.'s* application sets forth essentially a reiteration of the contentions of their petition to intervene. We have stated in our order denying interven-

[1] George F. Toney, Bertha M. Toney, James H. Mason, Alta Mason, Delbert O. Dunlap, Robert Dunlap, Dorothea R. Dunlap, Joseph Dunlap, Maude Dunlap, Imogene Dunlap, Earl Cockcroft, Gladys Cockcroft, Waller F. Barkley, Elsie E. Barkley, Frank Stratton, Max Landes, H. B. Lukken, Nina C. Lukken, Sherman A. Maynard, Harold Cartwright, Leatha Cartwright, Esther Shanks, Dell Shanks, Kenneth R. Wilhoit, Mildred N. Wilhoit, Harry C. Scott, Dorothy Scott, Maude Barkley, and Irving W. Voorhees.

tion that the only issue of fact or law which Toney, *et al.*, would raise pertains to their claimed property interests which are not affected by our action here. The application for rehearing does not set forth any new facts or principles of law which indicate that we were in error in denying intervention.

The Commission finds:

The assignments of error and grounds for rehearing in the above-described application for rehearing set forth no new facts or principles of law which either were not fully considered by the Commission when it issued its order of January 11, 1963, denying Toney, *et al.*, leave to intervene or which having now been considered warrant any change or modification of said order.

The Commission orders:

Toney, *et al.'s* application for rehearing of the Commission's order issued January 11, 1963, in Docket No. CP63-80, is hereby denied.

Commissioner Morgan *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. CP63-80

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 25, 1963)

On October 1, 1962, as supplemented on November 7, 1962, Midwestern Gas Transmission Company (Applicant) filed in Docket No. CP63-80 an application pursuant to Section 7(c) of the Natural Gas Act authorizing the construction and operation of certain facilities for the purpose of testing and evaluating three proposed storage fields located in the Nevins and Elbridge Fields, Edgar County, Illinois, and the State Line Field, Clark County, Illinois, and Vigo County, Indiana, all three proposed projects located adjacent to Applicant's southern system pipeline, all as more fully set forth in the application, as supplemented.

Applicant states that the average load factor at which its southern system is operated can be improved through the development of economical underground storage facilities capable of storing large volumes of natural gas near the ultimate market during periods of low consumer demand. Applicant states further that no storage service to any customer is proposed in the subject application, and that Applicant will seek authorization to render such storage service when the capabilities of the proposed storage fields are determined.

Applicant proposes to inject up to 4,000,000 Mcf of natural gas into the proposed storage areas during the testing program.

The estimated cost of the proposed projects is $4,489,400, which cost will be financed from funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 15, 1963, respecting the matters involved in and the issues presented by the application, as supplemented, herein. On December 31, 1962, George F. Toney, *et al.*,[1] filed a petition to intervene in this proceeding; however, by order

[1] George F. Toney, Bertha M. Toney, James H. Mason, Alta Mason, Delbert O. Dunlap, Robert Dunlap, Dorothea R. Dunlap, Joseph Dunlap, Maude Dunlap, Imogene Dunlap, Earl Cockcroft, Gladys Cockcroft, Waller F. Barkley, Elsie E. Barkley, Frank Stratton, Max Landes, H. B. Lukken, Nina C. Lukken, Sherman A. Maynard, Harold Cartwright, Leatha Cartwright, Esther Shanks, Dell Shanks, Kenneth R. Wilhoit, Mildred N. Wilhoit, Harry C. Scott, Dorothy Scott, Maude Barkley, and Irving W. Voorhees.

issued January 11, 1963, *supra*, p. 64, said intervention was denied. No other petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Midwestern Gas Transmission Company, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued May 12, 1959, in Docket No. G-16841 (21 FPC 653).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) The total expenditure for the facilities hereinafter authorized should be limited to a maximum of $4,489,400.

(7) The total volume of gas to be injected during the test period should not exceed a total of 4,000,000 Mcf.

(8) Applicant should submit, within 60 days after the end of the 12-month period following the date on which this order issues, a statement showing, by projects:

(a) a description of the facilities constructed during said 12-month period,

(b) the location of such facilities,

(c) the cost of such facilities,

(d) an estimate of the capacity of each successful project, and

(e) the volume of gas injected into and withdrawn from each reservoir.

(9) This order should not be construed as authorizing Applicant to capitalize interest during construction "at the rate of 7% per annum to the monthly balances of construction expenditures plus one-half of 7% per annum on each month's construction activity." Further the Commission reserves the right to review the Applicant's accounting as to the appropriate rate for such interest during construction.

(10) Applicant should record non-recoverable gas in Account 117, Gas Stored Underground, Non-current, unless the Commission subsequently orders or directs otherwise.

(11) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of

record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Midwestern Gas Transmission Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) The total expenditure for the facilities authorized in paragraph (A) above is hereby limited to a maximum of $4,489,400.

(D) The total volume of gas to be injected during the test period shall not exceed a total of 4,000,000 Mcf.

(E) Applicant shall submit, within 60 days after the end of the 12-month period following the date on which this order issues, a statement by projects:

(a) a description of the facilities constructed during said 12-month period,

(b) the location of such facilities,

(c) the cost of such facilities,

(d) an estimate of the capacity of each successful project, and

(e) the volume of gas injected into and withdrawn from each reservoir.

(F) This order shall not be construed as authorizing Applicant to capitalize interest during construction "at the rate of 7% per annum to the monthly balances of construction expenditures plus one-half of 7% per annum on each month's construction activity." Further the Commission reserves the right to review the Applicant's accounting as to the appropriate rate for such interest during construction.

(G) Applicant shall record non-recoverable gas in Account 117, Gas Stored Underground, Non-current, unless the Commission subsequently orders or directs otherwise.

Commissioner Morgan *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

CHRISTIE, MITCHELL & MITCHELL COMPANY, ET AL., DOCKET NO. G–15033, ET AL.[1]

ORDER ACCEPTING PROPOSED OFFER OF SETTLEMENT, TERMINATING CERTAIN PROCEEDINGS IN WHOLE AND OTHERS IN PART, PROVIDING FOR REFUNDS, AND ACCEPTING INCREASED RATE FILINGS

(Issued January 29, 1963)

On November 29, 1962, as supplemented December 14, 1962, Christie, Mitchell & Mitchell Company (Christie), submitted an Offer of Settlement, pursuant to

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[1] Additional proceedings involved in this order are listed in Appendix A attached hereto.

Section 1.18(e) of the Commission's Rules of Practice and Procedure, of the proceedings involving five suspension dockets pertaining to Christie's FPC Gas Rate Schedules Nos. 9 and 11. The contracts comprising these rate schedules are for Christie's jurisdictional sales of natural gas to Texas Eastern Transmission Corporation (Texas Eastern) from several fields and counties in Texas Railroad Commission District No. 2.

In its Offer of Settlement, Christie proposes: (1) that in return for permitting a rate of 14.6¢ per Mcf to be effective for gas sold from the Vienna Field [2] under its FPC Gas Rate Schedule No. 9, Christie agrees to eliminate from the related contract, with respect to the Vienna Field sale, the favored-nation clause contained therein, and to replace the annual escalations with 1.0¢ per Mcf periodic increases proposed to be effective on November 1, 1963, 1968, and 1973; (2) that in return for permitting a rate of 13.8733¢ per Mcf under its FPC Gas Rate Schedule No. 11, Christie agrees to eliminate from the related contract the favored-nation and price redetermination clauses contained therein, and to replace the annual escalations with 0.5¢ per Mcf periodic increases proposed to be effective on February 5, 1963, 1968, and 1973; (3) to refund to Texas Eastern all money collected subject to refund in excess of the proposed settlement rates under the subject rate schedules; and (4) the termination of the suspension proceedings involved herein.

As part of the settlement offer, Christie concurrently submitted notices of change wherein it proposes renegotiated rate increases of 1.9411¢ per Mcf from 11.9322¢ per Mcf to 13.8733¢ per Mcf under its FPC Gas Rate Schedules Nos. 10 and 17 (such increased rates are hereinafter referred to as Supplements Nos. 15 and 6, respectively) which pertain to Christie's sales to Texas Eastern from Goliad and DeWitt Counties, Texas Railroad Commission District No. 2, and requests that such increased rate proposals become effective on the date the Commission approves the Offer of Settlement. Such notices of change include copies of July 1, 1962 letter agreements with Texas Eastern providing for the 13.8733¢ per Mcf rates and deletion of favored-nation and price redetermination clauses, with replacement of annual escalations with 0.5¢ per Mcf periodic escalations on February 5, 1963, 1968 and 1973.

Texas Eastern has joined in the Offer of Settlement and has agreed, in the event the offer is accepted by the Commission, to make the contract changes or amendments provided in the offer. No objections to the proposed settlement have been received from intervenors or other interested parties.

Since the proposed settlement rates under Christie's FPC Gas Rate Schedules Nos. 9, 10, 11, and 17 are acceptable under the provisions of the Second Amendment of the Commission's Statement of General Policy No. 61–1,[3] issued December 20, 1960, for Christie's jurisdictional sales of natural gas from Texas Railroad Commission District No. 2, it appears that the public interest will be best served by accepting Christie's Offer of Settlement.

We desire to make it clear that acceptance of this Offer of Settlement shall not be construed as approval of any future increased rates proposed by Christie under the periodic escalation provisions or otherwise.

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[2] Rate Schedule No. 9 also relates to gas sales to Texas Eastern from the South Sheridan Field, Colorado, Texas (Texas Railroad Commission District No. 3); however, Christie's offer does not pertain to such sales.

[3] 18 CFR, Chapter 1, Part 2, Section 2.56; 24 FPC 1107; 25 F.R. 13799.

The Commission finds:

(1) The proposed settlement of the subject proceedings on the basis described herein, as more fully set forth in Christie's Offer of Settlement of November 29, 1962, is in the public interest and is appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective subject to the terms and conditions ordered.

(2) Good cause exists for terminating certain proceedings in whole and others in part, for providing for refunds, and for accepting for filing Supplements Nos. 15 and 6 to Christie's FPC Gas Rate Schedules Nos. 10 and 17, respectively.

The Commission orders:

(A) The Offer of Settlement filed by Christie on November 29, 1962, as supplemented December 14, 1962, is hereby approved and made effective as of the date of the issuance of this order, subject to the following terms and conditions.

(B) Christie shall file within 60 days from the date of issuance of this order a notice of change to its FPC Gas Rate Schedule No. 9 providing for the 14.6¢ per Mcf rate specified in its Offer of Settlement, and contractual amendments to its FPC Gas Rate Schedules Nos. 9 and 11, which Christie shall execute with Texas Eastern in conformity with Christie's Offer of Settlement in all respects. Both the notice of change and the contractual amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) The settlement rates which are set out in the Appendix A, attached hereto as part of this order, are approved and made effective as of the date of the issuance of this order.

(D) Within 60 days from the date of the issuance of this order Christie shall refund to Texas Eastern all amounts collected from Texas Eastern in excess of the rates agreed upon in the Offer of Settlement, together with simple interest as specified in each docket, from the respective dates of receipt of the excess amounts by Christie to the dates of refund. Christie shall bear all costs incidental to the making of such refunds.

(E) Within 60 days from the date of the issuance of this order, Christie shall report to the Commission the details of its calculations resulting in refunds ordered pursuant to paragraph (D) above, together with a copy of a release from Texas Eastern with respect to such refunds.

(F) Upon full compliance by Christie with all of the terms and conditions of this order and acceptance of the filings made pursuant hereto, the proceedings in Docket Nos. G–16180, G–19928, and RI61–219 are terminated only insofar as they relate to Christie's sale from Vienna Field, Lavaca County, Texas (Texas Railroad Commission Railroad District No. 2), and the proceedings in Docket Nos. G–15033 and RI62–127 are terminated in full.

(G) Supplements Nos. 15 and 6 to Christie's FPC Gas Rate Schedules Nos. 10 and 17, respectively, are hereby accepted for filing subject to the terms of the Offer of Settlement, and are effective as of the date of the issuance of this order.

(H) The acceptance of this Offer of Settlement is without prejudice to any findings or determinations that may be made in any proceedings which are presently being heard, or in any proceeding now pending, or hereinafter instituted by or against Christie.

Commissioner Morgan *not participating.*

APPENDIX A

Docket No.	FPC Gas Rt. Sch. No.	Supp. No.	Texas County	Texas Railroad Commission No.	Suspended rts. (14.65 psia)	Effective date	Settlement rts.[1] (14.64 psia)
G-15033	11	10	DeWitt	2	13.8733	10-11-58	13.8733
G-16180 [2 3]	9	18	Lavaca	2	14.4	2-18-59	14.6
G-19928 [2 3]	9	20	Lavaca	2	[4] 14.8	4-5-60	14.6
RI61-219 [2 3]	9	21	Lavaca	2	[4] 15.0	4-3-61	14.6
RI62-127 [2 5]	9	23	Lavaca	2	[4] 15.2	4-1-62	14.6
(6)	10	15	Goliad	2			13.8733
(6)	17	6	DeWitt	2			13.8733

[1] Includes present tax reimbursement.
[2] Settlement offer applicable only to sale under Rate Schedule No. 9 from the Vienna Field, Lavaca County, Tex. (Texas Railroad Commission District No. 2), and not from South Sheridan Field, Colorado County, Tex. (Texas Railroad Commission District No. 3).
[3] Name designation includes "(Operator)".
[4] Offer provides for refund of all amounts collected subject to refund which exceed the proposed settlement rates.
[5] This proceeding does not relate to a sale from South Sheridan Field.
[6] Renegotiated rate increase of 1.9411¢ per Mcf from 11.9322¢ per Mcf to 13.8733¢ per Mcf filed as part of Offer of Settlement.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NOS. G-4769, G-12948, G-17929 AND RP60-3

ORDER DENYING MOTION

(Issued January 29, 1963)

On December 31, 1962, the People of the State of California and the Public Utilities Commission of the State of California (California), filed a motion requesting the Commission to issue an order requiring El Paso Natural Gas Company (El Paso), to make immediate refunds in Docket Nos. G-12948, G-17929 and RP60-3 in accordance with the rate of return determinations of the Commission contained in Opinion No. 366, issued October 19, 1962, 28 FPC 688.

In support of its motion, California alleges that in view of the Supreme Court opinion in *Federal Power Commission* v. *Tennessee Gas Transmission Company*, U.S. Nos. 48 and 50, December 3, 1962, the Commission is failing in its duty under the Natural Gas Act by permitting El Paso the option of deferring refunds in Docket Nos. G-12948, G-17929 and RP60-3; that the Commission action is not equitable to consumers of natural gas for whose protection the Natural Gas Act was designed and that the Fifth Circuit Court of Appeals refused to stay the refund ordered by the Commission in Docket No. G-4769 and the reduction in the current rates in Docket No. RP60-3. California further states that because the rate increases involved in these proceedings span a time approaching 8 years, now is the time to afford the relief to which Opinion No. 366 entitles them.

On January 4, 1963, El Paso filed its answer and objection to California's motion alleging that the relief sought by California is inconsistent with the interim order procedure, including the deferral of refunds, that no other participant (excluding El Paso), had objected to the deferral of refunds until the present motion, that California has failed to exhaust its administrative remedies and that California has presented nothing to the Commission that was not before it when it previously considered the matter.

In answer to California's motion, Southern Union Gas Company (Southern Union) on January 7, 1963, states that if El Paso is required to make interim

refunds, unless they are required to adhere to the rate differential approved by this Commission in Opinion No. 326, 22 FPC 260, the result will be to discriminate against El Paso and its affected Arizona, New Mexico and Texas customers.

On page 954 of our order denying rehearing, issued December 7, 1962, 28 FPC 952, we stated as follows:

> It may be noted in connection with this decision [*Federal Power Commission* v. *Tennessee Gas Transmission Co.*, U.S. Nos. 48 and 50, December 3, 1962], that we would have been justified in ordering immediate refunds in all dockets in the present proceeding except that in our order establishing the interim order procedure we stated that refunds would not be ordered. It would not be equitable to alter the contemplated procedure at this late stage. (Citation added.)

California in its motion of December 31, 1962, has set forth no facts or principles of law which were not fully considered by the Commission when the above determination was made in our order of December 7, 1962, or which, having now been considered, warrant any change or modification of this determination.

The Commission finds:

For the reasons above stated, the motion of California should be denied.

The Commission orders:

The motion of California for further interim relief, filed December 31, 1962, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

FOREST OIL CORPORATION, DOCKET NO. G–5510

ORDER CONDITIONALLY ACCEPTING OFFER OF SETTLEMENT, PROVIDING FOR REFUNDS, AND TERMINATING PROCEEDING

(Issued January 29, 1963)

On August 30, 1962, Forest Oil Corporation (Forest) submitted, in accordance with the provisions of Section 1.18(e) of the Commission's Rules of Practice and Procedure, an offer of Settlement of the suspension proceeding in Docket No. G–5510 involving the jurisdictional sale of natural gas to Transcontinental Gas Pipe Line Corporation (Transco) from Pine Bluff Field, Acadia Parish, South Louisiana under Forest's FPC Gas Rate Schedule No. 1.

Forest's gas purchase contract with Transco, dated August 24, 1954 and filed as Forest's FPC Gas Rate Schedule No. 1, provided for a price of 8.797150¢ per Mcf for deliveries of "distress or emergency gas" prior to November 1, 1954, and for a price of 16.0¢ per Mcf, plus applicable tax reimbursement,[1] for the five-year period beginning November 1, 1954. On September 7, 1954, Forest was granted temporary authorization to make the proposed sale at 8.797150¢ per Mcf.[2]

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[1] Pursuant to Subparagraph (2) of Article X of the subject contract, the appropriate tax reimbursement payable to Forest has fluctuated from time time. At present Forest is reimbursed 1..5¢ per Mcf of the 2.3¢ per Mcf Louisiana severance tax.

[2] A permanent certificate was issued to Forest on September 21, 1956, in Docket No. G–2593. Prior to the submittal of its Offer, Forest filed on March 20, 1962, an application in Docket No. CI62–1102 for authority to abandon the sale certificated in Docket No. G–2593, which relates to Forest's FPC Gas Rate Schedule No. 1. In its application Forest states that production from the single well involved has ceased and the well has been plugged and abandoned.

On November 4, 1954, Forest tendered for filing Supplement No. 1 to its FPC Gas Rate Schedule No. 1, providing for the increased rate of 16.0¢ per Mcf, plus tax reimbursement. By order issued December 7, 1954, in Docket No. G–5510, the Commission suspended and deferred the use of said Supplement No. 1 until February 1, 1955, at which time it became effective subject to refund. After a full hearing, the increased rate was disallowed,[3] but by court order [4] issued February 20, 1959, the case was remanded to the Commission for presentation of further evidence. On remand, hearings were concluded on May 3, 1960, and briefs filed, but the Examiner's decision has not been issued.

In its Offer of Settlement Forest proposes a settlement rate of 15.5¢ per Mcf, plus applicable tax reimbursement, with refunds to be made of all amounts collected in excess of the settlement rate plus interest at the rate of 6% per annum. The Offer is conditioned upon the Commission (1) discharging Forest from any liability for refunds other than those provided for in the Offer, (2) terminating the proceeding in Docket No. G–5510, and (3) granting Forest's application in Docket No. CI62–1102 for authorization to abandon the sale previously certificated in Docket No. G–2593.

In support of its Offer, Forest states that the 8.797150¢ per Mcf rate was an interim, distress rate agreed upon by Forest in order to make an emergency sale. The emergency was occasioned by pressures encountered during drilling which created the danger of a blowout. Forest states that the 16.0¢ per Mcf, plus tax reimbursement, rate was actually the initial rate, and was not an increased rate, and that the Commission should treat the proposed settlement rate as an initial rate which is compatible with the initial rate ceiling set forth in the Commission's Statement of General Policy No. 61–1, as amended.

Transco has concurred in the Offer of Settlement, and no objections to the proposed settlement have been received from intervenors or other interested parties.

Upon review of these facts, we conclude that the 8.797150¢ per Mcf sale was a distress sale and that the proposed settlement rate of 15.5¢ per Mcf, plus applicable tax reimbursement, while in excess of our increased rate ceiling, is less than the initial rate ceiling and is therefore appropriate.

Forest proposes that, as a condition of the Offer, the Commission grant Forest's application in Docket No. CI62–1102 for authorization to abandon the sale previously certificated in Docket No. G–2593. Since Section 7(b) of the Natural Gas Act requires that a hearing be held to determine whether an application for abandonment should be approved, we cannot dispose of the application by this settlement. However, we shall promptly set the certificate matter for hearing.

The Commission finds:

(1) The proposed settlement of the proceeding in Docket No. G–5510, on the basis described herein, as more fully set forth in the Offer of Settlement filed by Forest on August 30, 1962, is in the public interest and is appropriate to carry out the provisions of the Natural Gas Act and should be conditionally approved and made effective subject to the terms and conditions ordered herein.

(2) Good cause exists for terminating the proceeding in Docket No. G–5510 and providing for refunds.

The Commission orders:

(A) The Offer of Settlement filed herein by Forest on August 30, 1962 is hereby conditionally approved and made effective as of the date of the issuance of this order, subject to the following terms and conditions.

[3] Forest Oil Corporation, Docket No. G–5510, order issued April 26, 1957, 17 FPC 617.
[4] *Forest Oil Corporation, et al.* v. *F.P.C.*, 263 F. 2d 622 (CA5, 1959).

(B) Within 30 days from the date of issuance of this order, Forest shall refund to Transco the difference between the amounts collected, subject to refund, and the settlement rate, together with simple interest of 6% per annum, from the respective dates of receipt of the excess amounts by Forest to the date of refund. Forest shall bear all costs incidental to the making of such refunds.

(C) Within 30 days from the date of issuance of this order, Forest shall report to the Commission the details of its calculations resulting in refunds ordered pursuant to paragraph (B) above, together with a copy of a release from Transco with respect to such refunds.

(D) Forest shall, over the signature of a responsible officer, file with the Commission within 15 days from the date of issuance of this order, an original and one copy of its acceptance or rejection of the terms and conditions of this order.

(E) Upon full compliance by Forest with all the terms and conditions of this order, the proceeding in Docket No. G–5510 shall be deemed to be terminated.

(F) The acceptance of this Offer of Settlement is without prejudice to any findings or determinations that may be made in any proceedings which are presently being heard, or in any proceedings now pending or hereinafter instituted by or against Forest, including any finding or determination that may be made with respect to the Forest application in Docket No. CI62–1102 for authorization to abandon the sale previously certificated in Docket No. G–2503.

Commissioner Morgan *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

HUMBLE GAS TRANSMISSION COMPANY, DOCKET NO. CP63–56

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 29, 1963)

On September 7, 1962, as supplemented on October 11, 1962, Humble Gas Transmission Company (Applicant) filed in Docket No. CP63–56 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 8.7 miles of 16-inch pipeline in St. Mary and St. Martin Parishes, Louisiana, and to transport and deliver a maximum of 150,000 Mcf of natural gas per day for Humble Oil & Refining Company (Humble Oil) to the terminus of Southern Natural Gas Company's (Southern) main transmission line in the Duck Lake Field, St. Martin Parish, all as more fully set forth in the application, as supplemented.

The gas to be transported by Applicant will be delivered to it by Humble Oil at the site of the latter's Garden City plant, St. Mary Parish. Applicant states that of the total volumes to be transported, 112,500 Mcf of natural gas per day will be used to meet maximum delivery obligations to Southern for the account of Sinclair Oil & Gas Company (Sinclair) under sales by Sinclair to Southern. The remaining 37,500 Mcf per day will be transported for use in Humble Oil's pressure maintenance program in the Duck Lake Field.

The proposed transportation service will be rendered pursuant to an agreement, dated August 14, 1962, between Applicant and Humble Oil. Applicant will receive from Humble Oil a monthly payment of $13,840 for the subject service.

The estimated cost of the proposed facilities is $857,100, which cost will be financed from funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 15, 1963, respecting the matters involved in and the issues presented by the application, as supplemented, herein. No petition to intervene or protect to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Humble Gas Transmission Company, a Delaware corporation having its principal place of business in New Orleans, Louisiana, upon completion of construction of the facilities and the commencement of operation thereof for which authorization is requested herein, will be engaged in the transportation of natural gas in interstate commerce and will be, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Humble Gas Transmission Company, to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

MIKE LITTLE GAS COMPANY, INC., DOCKET NO. CP63-79

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued January 28, 1963)

On September 24, 1962, Mike Little Gas Company, Inc. (Applicant) filed in Docket No. CP63-79 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Kentucky West Virginia Gas Company (Kentucky West Virginia) to establish a new physical connection of its pipeline facilities with the proposed facilities of Applicant, in place of the presently existing connection, and to sell additional natural gas to Applicant for resale in the community of Weeksbury, Floyd County, Kentucky, all as more fully set forth in the application.

Applicant presently renders natural gas service in the communities of Melvin, Bypro, Burton and environs, Floyd County, Kentucky.

The additional facilities required for the proposed operation are:

(1) Approximately 15,000 feet of 3-inch pipeline to extend Applicant's present gas distribution system to Weeksbury.

(2) Approximately 12,000 feet of 4-inch pipeline to effect a new physical connection with Kentucky West Virginia's system, all in Floyd County, Kentucky.

The total estimated cost of Applicant's proposed facilities is $28,850.

Applicant's estimated total peak day and annual requirements are:

Year	Peak day	Annual
	Mcf	*Mcf*
1963	455	46,500
1964	510	53,000
1965	550	57,000

On October 11, 1962, Kentucky West Virginia filed an answer to the subject application stating that it has no objection to serving Applicant, as requested.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on December 13, 1962 (27 F.R. 12385). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Kentucky West Virginia Gas Company, a West Virginia corporation having its principal place of business in Ashland, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 4, 1944, in Docket No. G-272 (4 FPC 476).

(2) Applicant, Mike Little Gas Company, Inc., is a public utility duly organized and existing under the laws of the Commonwealth of Kentucky and authorized to engage in the business of distributing and selling natural gas within Kentucky.

(3) It is necessary and desirable in the public interest that Kentucky West Virginia be directed to establish a new physical connection of its natural gas transportation system with the proposed facilities of Applicant, in place of

the presently existing connection, and to sell natural gas to Applicant as requested in the application in this proceeding, as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Kentucky West Virginia for the community of Weeksbury within one year from the date of issuance of this order.

(5) The requirement that Kentucky West Virginia serve Applicant, as proposed, will not place any undue burden upon Kentucky West Virginia nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Kentucky West Virginia Gas Company be and it is hereby directed to establish a new physical connection of its natural gas transportation system with the proposed facilities of Applicant, in place of the presently existing connection, and to sell natural gas to Applicant as hereinbefore described and as set forth in the application in this proceeding.

(B) Applicant shall be prepared to receive natural gas from Kentucky West Virginia for the community of Weeksbury within one year from the date of issuance of this order.

(C) Kentucky West Virginia shall report to the Commission in writing the date of commencement of service to Applicant.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-43

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 29, 1963)

On August 15, 1962, Northern Natural Gas Company (Applicant) filed in Docket No. CP63-43 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1963, and the operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally co-extensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $3,000,000, and no single project will exceed a cost of $500,000. The proposed facilities will be financed from funds on hand and funds generated through operations.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 15, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities to take natural gas purchased from producers thereof as proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization hereinafter granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization hereinafter granted, (d) location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Northern Natural Gas Company to construct during the calendar year 1963 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Northern Natural Gas Company.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general

terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit pursuant to Section 2.58 (c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the 12-month period commencing on the date on which this order issues, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP62-31

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 29, 1963)

On August 10, 1961, as supplemented on August 28, 1962, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP62-31 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas to North Penn Gas Company (North Penn) and United Natural Gas Company (United), all as more fully set forth in the application as supplemented.

Applicant seeks authorization to sell and deliver under its Rate Schedule ACQ-3 an annual contract quantity of 1,803,673 Mcf of gas to North Penn on a long term basis commencing in 1963 and a contract quantity of 3,577,381 Mcf of gas to United for the year 1963 only. North Penn requires that its service from Applicant commence in the latter part of 1963, making the volume for 1963 only 300,612 Mcf of gas.

North Penn and United require the additional gas service to meet the requirements of the residential, commercial, industrial, and public authority customers which they serve directly and indirectly.

Applicant requires no facilities in addition to those presently certificated in order to render the proposed service except for a pipeline with two meter stations connecting Applicant's Leidy line with the facilities of the purchasers in the vicinity of Wharton, Potter County, Pennsylvania. This pipeline and appurtenances are pending certification in Docket No. CP61-284.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 17, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application have been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G–1143 (7 FPC 145).

(2) The sale and delivery of natural gas hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, will be made in interstate commerce subject to the jurisdiction of the Commission, and said sale and delivery are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The sale and delivery of natural gas proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), and (e) of Section 157.20 of such Regulations.

(6) The certificate hereinafter issued should be conditioned upon the issuance and acceptance of the certificate authorization in Docket No. CP61–284.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transcontinental Gas Pipe Line Corporation, to sell and deliver natural gas as hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), and (e) of Section 157.20 of such Regulations.

(C) The certificate issued by paragraph (A) above is conditioned upon the issuance and acceptance of the certificate authorization requested in Docket No. CP61–284.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

UNITED FUEL GAS COMPANY, DOCKET NO. G–13372

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 29, 1963)

On July 27, 1962, United Fuel Gas Company (Applicant) filed an application to amend the Commission's order in Docket No. G–13372 issued September 9, 1958, 20 FPC 347, wherein Applicant was authorized, among other things, to

abandon and sell to Cabot Corporation (successor to Godfrey L. Cabot, Inc.) (Cabot) Applicant's natural gas Storage Pool X–1 and certain pipeline transmission facilities in Putnam County, West Virginia, all as more fully set forth in the application to amend.

Applicant was authorized by said order to transfer to Cabot the subject property and facilities during a period of time ending on May 1, 1962, and, during the interim period, the subject property and facilities were to be operated jointly by Applicant and Cabot pursuant to an agreement, dated May 31, 1957. Applicant proposes, in the instant application to amend, to continue the joint operation under an agreement between Applicant and Cabot, dated April 19, 1962, which provides substantially for a continuation of the interim operating arrangement. The primary term of the April 19, 1962, agreement is three years from May 1, 1962, and from year to year thereafter.

The application shows that on June 26, 1962, Storage Pool X–1 and related facilities were conveyed and assigned by Applicant to Cabot. The lease agreement of April 19, 1962, provides for the leasing to and operation by Applicant of some 3.5 miles of 10-inch pipeline extending from Applicant's Lanham compressor station to an interconnection with a 10-inch line conveyed to Cabot by Applicant and a 10-inch line owned by Applicant. Applicant will operate the leased lines pursuant to the arrangements set forth in the agreement of April 19, 1962; the excess capacity in said lines will be used by Applicant for its own purposes as it has heretofore been doing under the original operating agreement of May 31, 1957.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on November 24, 1962 (27 F.R. 11572). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued September 9, 1958, in Docket No. G–13372 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued September 9, 1958, in Docket No. G–13372 be and the same is hereby amended by authorizing Applicant to operate the subject facilities as hereinbefore described, as more fully set forth in the subject application to amend and the agreement, dated April 19, 1962, between Applicant and Cabot.

(B) In all other respects said order shall remain in full force and effect.

(C) Applicant shall make an appropriate rate filing consistent with the authorization granted in paragraph (A) above.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

WESTERN NATURAL GAS COMPANY, DOCKET NOS. G–14737, G–18889, AND RI61–49

ORDER ACCEPTING OFFER OF SETTLEMENT, PRESCRIBING REFUNDS AND TERMINATING PROCEEDINGS

(Issued January 29, 1963)

On February 24, 1958, Western Natural Gas Company (Western Natural) tendered for filing a notice of change in its presently effective FPC Gas Rate

Schedule No. 20 for the jurisdictional sale of natural gas to Texas Eastern Transmission Corporation (Texas Eastern) from the Jenny Bell Field, DeWitt County, Texas (Railroad Commission District No. 2). By order issued March 26, 1958, in Docket No. G–14737, the proposed increased rate of 13.8733¢ per Mcf, designated as supplement No. 6 to Western Natural's FPC Gas Rate Schedule No. 20, was suspended until August 27, 1958, when, upon proper motion, it became effective subject to refund.

On June 15, 1959, Western Natural tendered for filing notices of change in its presently effective FPC Gas Rate Schedule Nos. 21 and 22 for the jurisdictional sales of natural gas to Texas Eastern from the West George West Field, and Karon Slick Unit, respectively, Live Oak County, Texas (Railroad Commission District No. 2). By order issued July 13, 1959, in Docket No. G–18889, the proposed increased rates of 13.8733¢ per Mcf [1] designated as Supplement Nos. 4 and 3 to Western Natural's FPC Gas Rate Schedule Nos. 21 and 22, respectively, were suspended until December 16, 1959, when, upon proper motion, they became effective subject to refund.

On July 28, 1960, Western Natural tendered for filing notices of change in its FPC Gas Rate Schedule Nos. 20, 21, and 22. By order issued August 23, 1960, the proposed increased rate of 14.9444¢ per Mcf,[1] designated as Supplement Nos. 7, 5, and 4, to its FPC Gas Rate Schedule Nos. 20, 21, and 22, respectively, were suspended until January 28, 1961, when, upon proper motion, they became effective subject to refund in Docket No. RI61–49.

On December 5, 1962, Western Natural submitted, in accordance with the provisions of Section 1.18(e) of the Commission's Rules of Practice and Procedure, an Offer of Settlement of the suspension proceedings in Docket Nos. G–14737, G–18889, and RI61–49. In the Offer of Settlement, Wsetern Natural proposes to withdraw the rate filings in Docket No. RI61–49, and to establish settlement rates under its FPC Gas Rate Schedule Nos. 20, 21, and 22, of 13.8733¢ per Mcf.[1] Under the terms of the offer, the favored-nation and price redetermination provisions are to be eliminated from the rate schedules involved, and a schedule of 0.5¢ per Mcf periodic escalations at five-year intervals beginning February 5, 1963, is to be substituted therefor. The provisions in the contracts for reimbursement of seven-eights of any increases in taxes occurring after June 1, 1959, are to remain unchanged.

In support of its offer, Western Natural cites the deletion of the favored-nation and price redetermination provisions from the gas purchase contracts with Texas Eastern, and states that such provisions were important elements of consideration required by Western Natural under the contracts for the long-term commitment of its gas reserves to the performance of the contracts. Texas Eastern has concurred in the offer and has agreed to execute the contract amendments provided for therein. No objections to the offer have been received.

Since the proposed settlement rates, inclusive of present tax reimbursement, are acceptable under the provisions of the Second Amendment [2] to the Commission's Statement of General Policy No. 61–1,[3] for jurisdictional sale of natural gas in Texas Railroad Commission District No. 2, it is believed that the public interest will best be served by accepting Western Natural's proposed settlement as hereinafter set forth.

We desire to make it clear the acceptance of this Offer of Settlement shall not be construed as approval of any future increased rate proposed by Western Natural under the periodic escalation provisions or otherwise.

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[1] Under Rate Schedule No. 21 there is an additional 0.5¢ per Mcf charge for dehydration.
[2] Issued December 20, 1960, 24 FPC 1107.
[3] Issued September 28, 1960, 24 FPC 818 (18 CFR, Chapter I, Part 2, Section 2.56).

The Commission finds:

The proposed settlement of the proceedings in Docket Nos. G–14737, G–18889, and RI61–49, on the basis described herein, as more fully set forth in the Offer of Settlement filed with the Commission on December 5, 1962, is in the public interest and is appropriate to carry out the provisions of the Natural Gas Act, and should be approved as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by Western Natural with the Commission on December 5, 1962, is hereby approved in accordance with the provisions of this order.

(B) Western Natural shall file within 30 days from the date of issuance of this order contractual amendments to its FPC Gas Rate Schedule Nos. 20, 21, and 22, which Western Natural shall execute with Texas Eastern in conformity with Western Natural's Offer of Settlement in all respects. The contractual amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Within 45 days from the date of issuance of this order, Western Natural shall refund to Texas Eastern all amounts collected from Texas Eastern in excess of the rates specified in the Offer of Settlement, together with simple interest at the rate of 7 percent per annum from the date of receipt of the excess amounts to the date of refund. Western Natural shall bear all costs incidental to the making of the refunds.

(D) Within 60 days from the date of issuance of this order, Western Natural shall report to the Commission in writing the details of its calculations resulting in refunds ordered pursuant to paragraph (C) above, together with a copy of a release from Texas Eastern with respect to such refunds.

(E) Upon compliance by Western Natural with the terms of this order, the rate and charge of 13.8733¢ per Mcf, including present tax reimbursement, under its FPC Gas Rate Schedule Nos. 20 and 22, and the rate and charge of 14.3733¢ per Mcf, including present tax reimbursement, and including a 0.5¢ per Mcf dehydration charge under its FPC Gas Rate Schedule No. 21, shall be effective as of the date of issuance of this order, Western Natural's refund obligations in these proceedings shall be deemed discharged and the proceedings in Docket Nos. G–14737, G–18889, and RI61–49 shall be deemed terminated.

(F) The acceptance of this Offer of Settlement is without prejudice to any findings or determinations that may be made in any proceedings which are pending or which may be instituted by or against Western Natural.

Commissioner Morgan *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Charles R. Ross.

AMERADA PETROLEUM CORPORATION, ET AL., DOCKET NO. CI62–1544, ET AL.

ORDER DENYING APPLICATION FOR RECONSIDERATION AND REHEARING

(Issued January 30, 1963)

On December 31, 1962, Texaco Inc. (Texaco) pursuant to Section 1.34 of the Commission's Rules of Practice and Procedure, filed an application for rehearing and reconsideration of the Commission's denial of Texaco's request for the production of documents and application for subpoena *duces tecum* and *ad testificandum*.

On November 23, 1962, Texaco filed an extensive motion for the production of all books, papers, press releases, correspondence, memoranda, reports, records, analyses, computations, charts, graphs, schedules, summaries, projections, and writings of any kind whatsoever utilized by the Commission in determining the initial service rate for Texas Railroad District No. 4 as reflected in its *Statement of General Policy No. 61–1*, 24 FPC 818 (1960), and the *Fifth Amendment to the Statement of General Policy No. 61–1*, issued on August 30, 1962, 28 FPC 441. In addition Texaco applied for the issuance of a subpoena directing the Secretary of the Commission to appear before the Hearing Examiner in the instant proceeding to testify and to bring with him and produce the aforementioned papers and documents.

Texaco filed applications for certificates of public convenience and necessity in these proceedings, pursuant to Section 7 of the Natural Gas Act (Act) requesting authorization to sell gas in interstate commerce. Texaco and the other producers in this consolidated proceeding were granted the hearing required by Section 7 of the Act for the receipt of evidence leading to a determination as to whether the public convenience and necessity required the issuance of the requested certificates. Evidence upon which a determination of the issues in these cases, including the price issue, may be made accordingly was entered into the record, and the matter is now before the Hearing Examiner awaiting the filing of briefs.

Under the injunction of *CATCO* the Commission must give a most careful scrutiny and responsible reaction to the initial price proposals of producers under Section 7.[1] The Commission, of course, must weigh all factors bearing upon the public interest in determining whether a certificate should issue, and upon what terms. In each case the Commission must proceed upon the evidence before it to determine whether the applicant has supported his proposal by evidence showing the necessity thereof to the present or future public convenience and necessity before a permanent certificate may be issued.

The burden is upon the producer-applicant to prove that a certificate as requested is required by the public convenience and necessity. There is no burden upon the Commission, the Secretary of the Commission or the Commission Staff which must be borne to prove that fact. The effect of Texaco's motion is to place upon the Commission the burden of justifying a policy which it has expressed in its General Statement of Policy No. 61–1, as amended. Neither the Natural Gas Act nor the Administrative Procedure Act casts any such burden upon the Commission. A general statement of policy is a statement issued by an agency to advise the public properly of the manner in which the agency proposes to exercise a discretionary power. See Attorney General's Manual on Administrative Procedure Act, footnote 3, page 30.

While the Statement of General Policy No. 61–1, as amended, sets forth the guideline prices for all gas produced in specific areas for interstate consumption, there has been and can be no demonstration that failure of the Commission to specify and disclose the underlying information which led it to adopt specific "ceilings", or any staff memoranda upon which such determinations may have been based, has resulted or will result in Texaco's being aggrieved in these proceedings.

Our opinion in *Skelly* makes it clear that the Policy Statement sets forth only "guideline" prices at which the Commission indicated it would exercise its discretion in the absence of protest by intervening parties to certificate sales in a particular area.[2] It did not purport to fix the "in-line" price which *CATCO* and

[1] *Atlantic Refining Co.* v. *Public Service Commission of N.Y.*, 360 U.S. 378, 391.

[2] See *Skelly Oil Company, et al.*, 28 FPC 401, Opinion 362, Docket No. G–18638, *et al.*, issued on August 30, 1962.

the *UGI* cases[3] which followed it make clear are, in the absence of a compelling showing to the contrary, to be the public convenience and necessity price fixed after the statutory Section 7 hearing.

The burden of justifying the price at this hearing rests with the producer-applicant, but to the extent that contract provisions allow, this price may be higher or lower than the guideline price as the evidence demonstrates.[4]

Texaco has demonstrated no reason for justifying the production of the documents and issuance of a subpoena as requested. Accordingly it is necessary that Texaco's request be denied.

The Commission orders:

The above-noted request of Texaco Inc. for rehearing and reconsideration is hereby denied in all respects.

Commissioner Morgan *concurring*, filed a separate statement attached hereto.

Commissioner Ross *not participating.*

MORGAN, Commissioner, *concurring:*

Texaco's attempt to require us here to produce the documents we used in setting the initial price ceilings for Texas District No. 4 is patently improper, because the types of documents it asks for are privileged. I therefore concur with my colleagues in denying Texaco's motion.

But the Texaco motion involves a more disturbing question—namely, whether our "interim" price technique is either a fair or an effective means of holding the price of gas to ". . . the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest."[5] My apprehension that it is neither stems from my belief that:

(1) record evidence shows that in several areas discrepancies exist between "in-line" prices and initial ceilings;

(2) the Policy Statement[6] advances unacceptably general reasons in defense of those discrepancies; and

(3) the magnitude of the burden required to prove a discrepancy unjustified is too great.

The Policy Statement sets interim "rate standards", usually referred to as area ceilings, which determine the acceptability of producer prices. But the Policy Statement does not show that those "standards" represent "the lowest possible reasonable rate" at which gas should be sold. Thus they fall short of accomplishing the purpose and intent of the Act.[7]

On the contrary, a substantial body of evidence shows that a number of those rate standards are not "the lowest possible reasonable rate" or "in-line" price for gas. It has been demonstrated that certain "standards" were set at levels permitting the collection of rates demonstrably exceeding the "lowest possible reasonable rate" for gas. It may also be that some others were set too low, but as yet, and perhaps for reasons to be discussed, this has not been demonstrated.

[3] *United Gas Improvement Co.* v. *FPC*, 283 F2d 817 (CA 9) *certiorari* denied 365 U.S. 881; *United Gas Improvement Co.* v. *FPC*, 290 F2d 133 (CA 5) *certiorari* denied 368 U.S. 823.

[4] Our reference in *Skelly* to the fact that the producers in these proceedings would be free to show whether the in-line price at the time of their contracts was the original ceiling price established on September 28, 1960, the lower price found to be the in-line price prior to that date or the 16-cent price established in the 5th Amendment to the Statement of Policy does not mean that they are confined to any of these three separate prices if the relevant in-line price was in fact at some other level. By this language we meant only to convey the thought that at this hearing all parties would have free reign to show the proper in-line price, wherever it might happen to fall.

[5] *Atlantic Refining Co.* v. *Public Service Commission*, 360 U.S. 378 (1959).

[6] 24 FPC 818.

[7] *Atlantic Refining Co. supra*, at page 388, footnote 7.

The fundamental defect in the Policy Statement is that, although purporting to serve only as a "guide," the "considerations" it recites to support its ceilings are so broad that, even though a producer or intervenor (upon whom the Policy Statement places the burden of disproving its unexplained ceilings) were to show that a ceiling or a proposed rate is unwarranted, the Statement still permits us to justify that rate in terms of some unnamed "relevant fact."

This confuses (a) the prior duty of Government to set determinable standards, with (b) the subsequent duty of applicants to show whether they have met those standards. Such confusion is unfair and unacceptable for two reasons:

(1) absent an understandable explanation of the reasons which require a ceiling or a rate to be set at a specific level, no one can prove those reasons unreasonable or in error; and

(2) no single party can prove that the needs of an entire segment of the industry are not met or are exceeded by a rate based on unknown factors.

The Policy Statement issued by this Commission contains only a single, but many-faceted, clue for the guidance of those who wish to know by what means we have set the area rate standards or ceilings. It is contained in the following passage:

> In arriving at the price levels . . . we have considered all of the relevant facts, [including] . . . cost information from all decided and pending cases, existing and historical price structures, volumes of production, trends in production, price trends in the various areas over a number of years, trends in exploration and development, trends in demands, and the available markets for the gas.

This suggests that we used a formula of some kind, but the formula itself is not revealed; for the statement contains no hint as to the respective weights given to each of these "relevant facts" or of the way in which they may have been combined to produce final judgment.

The Policy Statement is even more deficient as a guide to those interested parties who may wish to exercise their rights to attack or disprove a rate standard or ceiling set by us or an individual rate thereunder accepted by us. In addressing itself to all such parties, be they producers, purchasers or intervenors, the Policy Statement has this to say:

> . . . we will, in determining whether the higher price is justified, not necessarily consider only the financial requirements of the individual producer proposing the price, but will consider all of the above elements relevant to the industry generally in the area concerned. Similar evidence will also be required from purchasers or their customers who object to any of the price levels or any specific price.

The "relevant" elements referred to are, of course, precisely those set forth as the asserted components of the Policy Statement's hinted-at but undisclosed formula. By this means the Commission has placed on producers, purchasers or intervenors the burden of disproving or discrediting a formula for setting rates which the Commission claims to have employed in the setting of rates, but which it has never identified, explained or demonstrated publicly.

If we are unwilling or unable to disclose our formula for the setting of rates, and perhaps even less willing or able to demonstrate the validity of such a formula, what right have we to place on others the burden of disproving it? And what possibility exists that others can do so? These are not, to me, merely rhetorical questions. They relate to basic legal and constitutional rights of the citizenry, and I am persuaded that the procedures discussed herein have done violence to those rights.

In any event, the result is that the consuming public and the producing industry alike have no assurance that the price we certificate represents "the lowest possible reasonable rate" at which gas should be sold.

Accordingly, as long as the absence of discernible criteria prevents an interested party from proving that the "considerations" we invoked are wrong, it is no answer to the problem which gives rise to the Texaco motion to say that a party may undertake in a certificate proceeding to show that our ceiling is not "the lowest possible reasonable rate" required by the Act. For the Commission, in fact remains free to apply those unexplained ceilings with inflexible rigidity, or to modify or suspend them with indiscernible arbitrariness.[4]

The most recent demonstration of this is the *Skelly* case. There, after finding that the "in-line" price was 15¢, the Commission majority ruled that certain producers should continue to charge and collect their higher contract rates, for the reason that they may have relied upon an (excessive) 18¢ ceiling when they negotiated their contracts. Further, the majority consolidated their applications in an additional hearing to give them an (additional) opportunity to "show" that their excessive rates should continue because predicated upon a ceiling already shown to have been excessive.

Elsewhere, parties time and again have introduced all kinds of evidence to show that one or more of our ceilings was not "the lowest possible reasonable rate"; and while our opinions rejecting that evidence said it did not demonstrate our ceilings or the "considerations" supporting them to be wrong, none of the opinions spelled out what those considerations were. If continued, such practices will fast convert our Policy Statement "guidelines" to irrebuttable presumptions. For as the Supreme Court explained in a similar situation, holding an agency policy statement to be a reviewable act:

> The particular label placed upon [its action] by the Commission is not necessarily conclusive, for it is the substance of what the Commission has purported to do and has done which is decisive.[5]

Here, Texaco, a producer, clearly has an interest in showing that we set the ceiling in question below "the lowest possible reasonable rate." Yet it finds itself as much in the dark concerning the "considerations" on which we based that ceiling as other parties who would like to show the exact opposite. Were it not for the embarrassing legal precedent it might create, I would willingly make available whatever documents there may be of the type Texaco describes—and for the benefit of those other parties as well as for Texaco. This, however, we cannot do.

I submit that the interim answer to the larger problem discussed here is the revision of our initial ceilings with maximum practicable dispatch. In making those revisions, I further submit that we should adopt and *demonstrably* apply the method of determining price "in-lineness" enunciated in the dissenting statement to the Fifth Amendment of our Policy Statement, issued August 30, 1962, 28 FPC 441; 442.

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[4] The words of Justice Frankfurter are again appropriate here. "Congress," he explained in the Hope case, "has committed to the administration of the Federal Power Commission the duty of applying standards of fair dealing and of reasonableness relevant to the purposes expressed by the Natural Gas Act. * * * To what sources then are the Commission and the courts to go for ascertaining the *standards* relevant to the regulation of natural gas rates? * * * It will not do to say that it must all be left to the skill of experts. Expertise is a rational process and a rational process implies *expressed reasons* for judgment." (Emphasis supplied.) *Federal Power Commission, et al.* v. *Hope Natural Gas Co.*, 320 U.S. 591 at 626–627 (1943).

[5] *Columbia Broadcasting System, Inc.* v. *United States*, 316 U.S. 407 (1942).

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

LONE STAR GAS COMPANY, DOCKET NO. CP63-64

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 30, 1963)

On September 17, 1962, Lone Star Gas Company (Applicant) filed in Docket No. CP63-64 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1963, and the operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $1,400,000, and no single project will exceeed a cost of $350,000. The proposed facilities will be financed from funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 17, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Lone Star Gas Company, a Texas corporation having its principal place of business in Dallas, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 11, 1944, in Docket No. G-442 (4 FPC 565).

(2) The facilities hereinbefore described as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities to take natural gas purchased from producers thereof as proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization hereinafter granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization hereinafter granted, (d) location of said projects or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $1,400,000, with no single project to exceed a cost of $350,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Lone Star Gas Company to construct during the calendar year 1963, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Lone Star Gas Company.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $1,400,000, with no single project to exceed a cost of $350,000.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP63–75

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 30, 1963)

On September 24, 1962, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP63–75 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1963, and the operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally co-extensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $3,500,000, and no single project will exceed a cost of $500,000. The proposed facilities will be financed from funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 16, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation havings its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–235 (3 FPC 830).

(2) The facilities hereinbefore described as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities to take natural gas purchased from producers thereof as proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act

and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization hereinafter granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization hereinafter granted, (d) location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $3,500,000, with no single project to exceed a cost of $500,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Natural Gas Pipeline Company of America to construct during the calendar year 1963 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Natural Gas Pipeline Company of America.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $3,500,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NEW YORK STATE NATURAL GAS CORPORATION AND HOME GAS COMPANY, DOCKET NO. G–17544

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 30, 1963)

On October 18, 1962, New York State Natural Gas Corporation (New York Natural) and Home Gas Company (Home) (sometimes hereinafter referred to jointly as Applicants) filed in Docket No. G–17544 a joint application to amend the Commissions order, issued May 29, 1959, in Docket No. G–17544, 21 FPC 796, all as more fully set forth in the joint application to amend on file with the Commission.

The subject order authorized Applicants to construct, operate and acquire certain facilities and to exchange natural gas at certain interconnections only during emergencies.

Under the subject proposal, pursuant to a new and additional agreement, New York Natural will construct approximately 2.7 miles of 4-inch pipeline from certain gas wells in the Town of Van Etten, Chemung County, New York, to connect with Home's pipelines in said town and county. Home will construct a measuring station at such connection, and New York Natural will reimburse Home for the cost of such station. The proposed facilities will be used by New York Natural to deliver its Van Etten Field gas to Home, and Home will deliver corresponding volumes of gas to New York Natural at the aforementioned existing interconnections. The joint application shows that the Van Etten wells are located approximately nine miles from New York Natural's nearest pipeline, but only 2.7 miles from Home's pipelines.

The total cost of the proposed facilities is estimated to be $49,750.

Applicants seek herein to have the May 29, 1959, order amended by authorizing the proposed construction and operation of facilities and the proposed additional exchange of gas.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on December 11, 1962 (27 F.R. 12231). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued May 29, 1959, in Docket No. G–17544 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued May 29, 1959, in Docket No. G–17544 be and the same is hereby amended by authorizing Applicants, New York State Natural Gas Corporation and Home Gas Company, to construct and operate the proposed facilities and to exchange and deliver natural gas, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 1403

ORDER DETERMINING NET CHANGE IN ACTUAL LEGITIMATE ORIGINAL PROJECT COST AND PRESCRIBING ACCOUNTING THEREFOR

(Issued January 30, 1963)

Pacific Gas and Electric Company, Licensee for Project No. 1403,[1] filed statements, pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming for the period from November 1, 1944, through December 31, 1957, project additions and retirements resulting in (1) a $14,041.59 net increase in project cost over the previously determined amount of actual legitimate original cost of the project, $1,439,446.53 as of October 31, 1944,[2] and (2) a resulting total claimed actual legitimate original cost of the project as of December 31, 1957, of $1,453,488.12.[3] The claimed net increase of $14,041.59 results from claimed and recorded project gross additions and retirements totaling $15,119.00 and $1,077.41, respectively, and is more specifically shown in the attached schedule.

The Commission's staff made an examination of the books and records of Licensee and other data for the purpose of ascertaining the correctness of the foregoing claimed amounts; and of reviewing Licensee's recorded amounts of accrued depreciation applicable to in-service project properties of the Narrows development. As the result of this examination, the staff proposes no adjustments to claimed and recorded project costs and recommends that the foregoing project costs be allowed as part of the actual legitimate original cost of Project No. 1403. The staff's studies of the project depreciation reserve are incomplete, and the staff therefore makes no recommendations with respect to that matter.

The California Public Utilities Commission was advised by letter of this Commission dated May 1, 1962, of Licensee's claimed and recorded project costs and the staff's recommendation with respect thereto. By letter of May 10, 1962, that Commission indicated no objection to the foregoing.

The Commission finds:

(1) The staff's recommendation herein respecting Licensee's claimed and recorded project costs and the California Public Utilities Commission's letter of May 10, 1962, obviate the necessity for notice and opportunity to protest provided in Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The net increase or change in the actual legitimate original cost of Project No. 1403 (Narrows) from November 1, 1944, through December 31, 1957, is $14,041.59 and the resulting actual legitimate original cost of the project as of December 31, 1957, is $1,453,488.12, all classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act as shown in the attached Schedule.

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[1] The project is located on the Yuba River in Nevada County, California, and may be described generally as the Narrows development or plant. The license (issued pursuant to Section 4(e) of the Federal Power Act), authorizing the construction, operation, and maintenance of the project, is by its terms effective for a period of 50 years commencing August 1, 1941.

[2] See Commission order issued December 3, 1957 (18 FPC 745).

[3] Article 18 of the license provides for Commission determination of the actual legitimate original cost of the project and of any additions thereto or betterments thereof.

(3) It is necessary and appropriate for the purposes of the Federal Power Act that determination of the accrued depreciation applicable to in-service project properties of Project No. 1403, as of December 31, 1957, be reserved for future Commission consideration and decision as hereinafter ordered.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed project accounts, showing the debit amount of $14,041.59 as the net change in the actual legitimate original cost of Project No. 1403 during the period from November 1, 1944, through December 31, 1957, and the total debit balance of $1,453,488.12 as the actual legitimate original cost of the project as of December 31, 1957, all classified by the prescribed accounts as shown in the attached schedule.

(C) The matter of Commission determination of the amount of the reserve for depreciation applicable to in-service project properties of Project No. 1403 as of December 31, 1957, is hereby reserved for future Commission consideration and decision.

SCHEDULE.—PACIFIC GAS AND ELECTRIC COMPANY

[Actual legitimate original cost]

Account [1] No.	Title	Total allowed cost as of Oct. 31, 1944 [2]	Changes from Nov. 1, 1944, to Dec. 31, 1957, as claimed and as allowed	Total allowed cost as of Dec. 31, 1957
	(1)	(2)	(3)	(4)
100.1	ELECTRIC PLANT IN SERVICE			
	HYDRAULIC PRODUCTION PLANT			
320	Land and land rights	$7,883.81		$7,883.81
321	Structures and improvements	310,866.88	$5,626.70	316,493.58
322	Reservoirs, dams, and waterways	319,020.64	1,454.41	320,475.05
323	Water wheels, turbines, and generators	533,691.57	863.90	534,555.47
324	Accessory electric equipment	97,164.60	1,756.67	98,921.27
325	Miscellaneous power plant equipment	1,816.02	3,462.45	5,278.47
326	Roads, railroads, and bridges	58,854.96	452.97	59,307.93
	Total hydraulic production plant	1,329,298.48	13,617.10	1,342,915.58
	TRANSMISSION PLANT			
340	Land and land rights	3,772.25		3,772.25
341	Clearing land and rights-of-way	2,413.87	.53	2,414.40
343	Station equipment	76,776.63	20.90	76,797.53
345	Poles and fixtures	10,032.61	2.36	10,034.97
346	Overhead conductors and devices	8,691.60	2.29	8,693.89
	Total transmission plant	101,686.96	26.08	101,713.04
	GENERAL PLANT			
378	Communication equipment	8,461.09	398.41	8,859.50
	Total general plant	8,461.09	398.41	8,859.50
	Total electric plant in service	1,439,446.53	14,041.59	1,453,488.12

[1] Account references and titles are to the Commission's Uniform System of Accounts effective prior to Jan. 1, 1961.

[2] See Commission's Order Issued December 3, 1957 (18 FPC 745).

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

RIO GRANDE ELECTRIC COOPERATIVE, INC., BISHOP LYLE BAILEY, DOCKET NO. E-6788; BISHOP LYLE BAILEY, DOCKET NO. E-6789

ORDER TERMINATING AUTHORIZATION TO TRANSMIT ELECTRIC ENERGY TO MEXICO AND REVOKING PERMIT TO CONSTRUCT FACILITIES AT THE INTERNATIONAL BORDER

(Issued January 30, 1963)

The Commission, by order issued June 27, 1958, in Docket No. E-6788 (19 FPC 1124), authorized Bishop Lyle Bailey (Bailey) and Rio Grande Electric Cooperative, Inc. (Cooperative), pursuant to Section 202(e) of the Federal Power Act, to transmit electric energy from the United States to Mexico in an amount not in excess of 200,000 kwh per year at a rate of transmission not to exceed 30 kva. That order showed that Bailey would be the transmitter and Cooperative would be the supplier of such exported energy, which would be transmitteed from a point on the north side of the Rio Grande in the Big Bend National Park in Brewster County, Texas, across the international border to Boquillas, Coahuila, Mexico, for use in connection with Bailey's fluorspar operations. Concurrently with the issuance of its June 27, 1958, order, the Commission released to Bailey a Permit signed by the Chairman of the Commission on May 9, 1958, Docket No. E-6789, authorizing Bailey, pursuant to Executive Order No. 10485, dated September 3, 1953, to construct, operate, maintain and connect certain electric facilities at the international border between the United States and Mexico for such exportation of electric energy from the United States.

Bailey, by letter dated June 15, 1962, advised the Commission that he has not been able to obtain permission from the Mexican Government to transmit electric energy into Mexico for his fluorspar operations and requested the Commission to cancel the aforementioned export authorization. Information on file with the Commission indicates that the facilities authorized by the Permit referred to above have not been constructed.

The Commission finds:

It is necessary and appropriate for the purposes of the Federal Power Act and Executive Order No. 10485, that the above-mentioned authorization to export electric energy be terminated, and that the above-mentioned Permit signed by the Chairman of the Federal Power Commission on May 9, 1958, be revoked, all as hereinafter ordered.

The Commission orders:

The authorization heretofore granted to Bailey and Cooperative to transmit electric energy from the United States to Mexico and the Permit heretofore granted to Bailey to construct and maintain facilities at the international border, United States and Mexico, all as referred to above, are hereby terminated and revoked.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

SOUTHERN CALIFORNIA EDISON COMPANY, PROJECT NO. 2175

ORDER AMENDING LICENSE (MAJOR)

(Issued January 30, 1963)

Application was filed on November 6, 1962, by Southern California Edison Company, licensee for major Project No. 2175, for amendment of license with

respect to lands of the United States occupied by the project, located on Big Creek, tributary to the San Joaquin River, in Fresno, Tulare, and Kern Counties, California, and affecting navigable waters and lands within Sierra National Forest and other lands of the United States.

The license was issued on March 27, 1959, 21 FPC 419, effective as of March 1, 1959.

A staff re-examination of the lands of the United States occupied by the project transmission and telephone lines reveals that the length of the 100-foot wide right-of-way on lands of the United States occupied by the project transmission and telephone lines is less than that upon which the annual charge specified in subparagraph (iii) of Article 32 of the license is based. The re-examination shows that the said lines occupy the equivalent of a 100-foot wide right-of-way on lands of the United States 37.14 miles in length. Consequently, subparagraph (iii) of Article 32 of the license should be amended as requested in the above-mentioned application for amendment.

The Commission finds:

(1) The lincense, amended as hereinafter ordered is not inconsistent with the public interest.

(2) The decreased amount of annual charges for the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands for transmission line right-of-way is reasonable as hereinafter fixed and specified.

The Commission orders:

(A) Subparagraph (iii) of Article 32 of the license for Project No. 2175 is hereby amended, effective as of March 1, 1959, to read as follows:

(iii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands for transmission line right-of-way, $297.12.

(B) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgement of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP63–85

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 30, 1963)

On October 8, 1962, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP63–85 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1963, and the operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally co-extensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $2,500,000 and no single project will exceed a cost of $500,000. The proposed facilities will be financed from general funds or revolving credit.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 15, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of July 15, 1947, in Docket No. G–910 (6 FPC 777).

(2) The facilities hereinbefore described as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities to take natural gas purchased from producers thereof as proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization hereinafter granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization hereinafter granted, (d) location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $2,500,000 with no single project to exceed a cost of $500,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Tennessee Gas Transmission Company to construct during the calendar year 1963 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Tennessee Gas Transmission Company.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $2,500,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP63-58

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 30, 1963)

On September 7, 1962, as supplemented on September 18, 1962, United Gas Pipe Line Company (Applicant) filed in Docket No. CP63-58 and application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1963, and the operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $1,500,000 and no single project will exceed a cost of $375,000. The proposed facilities will be financed from current working funds.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 17, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) The facilities hereinbefore described as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities to take natural gas purchased from producers thereof as proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder by conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization hereinafter granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization hereinafter granted, (d) location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(7) The authorization hereinafter granted should be limited to construction during the calender year 1963, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $1,500,000, with no single project to exceed a cost of $375,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing United Gas Pipe Line Company to construct during the calendar year 1963, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to United Gas Pipe Line Company.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $1,500,000, with no single project to exceed a cost of $375,000.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP63-94

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 31, 1963)

On October 15, 1962, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP63-94 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1963, and the operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally co-extensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $3,247,850, and no single project will exceed a cost of $500,000. The proposed facilities will be financed from funds on hand, cash generated by operations, and internal sources.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 17, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c) (1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" as heretofore found by the Commission in its order of January 26, 1943, in Docket No. G–252 (3 FPC 910).

(2) The facilities hereinbefore described as more fully described in the application in this proceeding, are proposed to be used in transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities to take natural gas purchased from producers thereof as proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization hereinafter granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization hereinafter granted, (d) location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $3,247,850, with no single project to exceed a cost of $500,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Arkansas

Louisiana Gas Company to construct during the calendar year 1963 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Arkansas Louisiana Gas Company.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $3,247,850, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr, Charles R. Ross, and Harold C. Woodward.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP63-95

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 31, 1963)

On October 15, 1962, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP63-95 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience an necessity authorizing the construction during the calendar year 1963 and the operation of unspecified natural gas facilities to enable Applicant to make new industrial sales of natural gas from its main pipeline system, all as more fully set forth in the application.

The purpose of this "budget-type" application is to enable Applicant to act with reasonable dispatch in establishing new delivery points without the delay incident to the filing and processing of individual certificate applications for each new delivery point.

Applicant estimates the total annual gas requirements of the new direct industrial customers to be served through the subject facilities to be approximately 10,000,000 Mcf.

The total cost of the proposed facilities will not exceed a maximum of $800,000, and no single project will exceed a cost of $200,000.

Deliveries of interstate gas will not be made into the pipeline operated by Arkansas Industrial Pipeline Corporation which extends from a point near Perla, Arkansas, to a point near Helena, Arkansas under the authorization herein requested.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 17, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c) (1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 26, 1943, in Docket No. G–252 (3 FPC 910).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities to establish new delivery points to enable Applicant to make new industrial sales of natural gas from its main pipeline system as proposed are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization hereinafter granted, a statement showing: (a) the location of each project constructed pursuant to the authorization hereinafter granted, (b) a description of each project, (c) the name of each customer served, (d) the actual final cost of the facilities in each project, (e) the use to which the gas is put by each customer, and (f) the estimated annual volume to be delivered to each customer and the average rate per Mcf to be charged therefor.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $800,000, with no single project to exceed a cost of $200,000.

(8) Deliveries through the facilities hereinafter authorized should not exceed 10,000,000 Mcf per year, and no deliveries of interstate gas should be made through the facilities hereinafter authorized into the pipeline operated by Arkansas Industrial Pipeline Corporation.

(9) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Arkansas Louisiana Gas Company to construct during the calendar year 1963 the facilities hereinbefore described, all as more fully described in the application in this proceeding, and to operate such facilities only to establish new delivery points to enable Applicant to make new industrial sales.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit within 60 days after the expiration of the authorization hereinafter granted, a statement showing: (a) the location of each project constructed pursuant to the authorization hereinafter granted, (b) a description of each project, (c) the name of each customer served, (d) the actual final cost of the facilities in each project, (e) the use to which the gas is put by each customer, and (f) the estimated annual volume to be delivered to each customer and the average rate per Mcf to be charged therefor.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder are hereby limited to $800,000, with no single project to exceed a cost of $200,000.

(E) Deliveries through the facilities authorized in paragraph (A) above shall not exceed 10,000,000 Mcf per year, and no deliveries of interstate gas shall be made through the facilities hereinbefore authorized into the pipeline operated by Arkansas Industrial Pipeline Corporation.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

CITY AND COUNTY OF DENVER, COLORADO, PROJECT NO. 2204

ORDER ISSUING LICENSE (MAJOR)

(Issued January 31, 1963)

Application was filed on May 11, 1956, and supplemented on May 21, October 4, 5 and 29, 1956, January 18, May 31, and June 28, 1957, and April 27, 1962, by City and County of Denver (Applicant)—acting by, through and for the use of its Board of Water Commissioners—of Denver, Colorado, for a license under the Federal Power Act (Act) for certain project works, constructed and to be constructed, designated as major Project No. 2204, located on the Williams River (also known as Williams Fork River), a tributary of the Colorado River, in the region of the Villages of Hot Sulphur Springs and Parshall, in Grand County, Colorado, and affecting lands of the United States.

The original dam and water supply reservoir on Williams Fork River were completed and put into use during 1941, as primarily a municipal water supply system, under a permit issued by the Bureau of Land Management of the Department of the Interior.[1] In its application, Applicant seeks a license to authorize

[1] Section 6 of the Boulder Canyon Project Act (45 Stat. 1057) as amended March 1, 1929, by Pub. Res. No. 98 (45 Stat. 1446), withdrew the Commission's licensing authority over the Colorado River and its tributaries, except the Gila River and its tributaries, but such authority was restored when said Act became effective (46 Stat. 3000).

the then existing project works, and future enlargement of the existing dam and installation of a 3,000 kilowatt generating unit in the reservoir on Williams Fork River. By letter dated December 27, 1956, the Commission advised Applicant that it would interpose no objection to its proposal to award contracts for electrical equipment and to proceed with construction at the Applicant's risk. It appears that the project was completed and placed in operation by Applicant on July 25, 1959.

The Secretary of the Army and Chief of Engineers have reported on the application and offered no objection thereto. Although the Secretary of the Interior was invited to report on the application, no such report has been received to date.

The Department of Game and Fish, State of Colorado, reported on the application and recommended certain conditions in the interests of fish and wildlife resources, for inclusion in any license issued for the project.

While permitted to intervene in this proceeding by Commission order issued December 5, 1956, and having filed a subsequent complaint with respect to operation of the project, Middle Park Conservancy District has advised by letter dated January 21, 1960 that the matters complained of do not presently occur.

The Commission finds:

(1) The project affects lands of the United States.

(2) Applicant is a municipal corporation organized under the laws of the State of Colorado and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license for the project.

(3) The project consists of:

(a) All lands constituting the project area and enclosed by the project boundary, or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purposes of the project, whether such lands or interests therein are owned or held by the applicant or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: Sheet 52–1 (FPC No. 2204–16) Location Map.

Exhibit K: Sheet 52–59 (FPC No. 2204–17) Map of Project Area; Sheet 52–60 (FPC No. 2204–18) Map of Project Area; Sheet 52–61 (FPC No. 2204–19) Lower Access Road; Sheet 52–62 (FPC No. 2204–20) 69 KV Transmission Line; Sheet 53–3 (FPC No. 2204–21) 69 KV Transmission Line—Plan and Profile Sta. 0+88 to Sta. 51+00; Sheet 53–4 (FPC No. 2204–22) 69 KV Transmission Line—Plan and Profile Sta. 49+00 to Sta. 94+50.

(b) All project works consisting of: A concrete arch dam (an enlargement of an existing dam), having a gated spillway on the left bank and creating a reservoir with capacity of 93,637 acre-feet at maximum water surface elevation of 7,800 feet; a low earth dike; a powerhouse at the downstream toe of the dam containing a single turbine rated at 4,250 horsepower and connected to a 3000 kilowatt generator operating under a gross head of about 193 feet; step-up substation adjacent to the powerhouse; a 69 KV transmission line about 2 miles long connecting the powerhouse to the United States Government's 69 KV transmission line near Parshall, Colorado; and other appurtenant facilities; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: Sheet 52–8 (FPC No. 2204–23) General Plan and Section; Sheet 52–9 (FPC No. 2204–24) Elevation and Sections; Sheet 52–10 (FPC No. 2204–25) Layout of Arch Dam; Sheet 52–18 (FPC No. 2204–26) Spillway, General Plans and Sections; Sheet 52–29 (FPC No. 2204–27) Outlet Works Alterations, Access Bridge to Power Plant, Valve Installation; Sheet 52–36 (FPC No. 2204–28) General Arrangement, Architectural Elevations and Details; Sheet 52–38 (FPC No. 2204–29) General Arrangement, Floor Plans; Sheet 52–39 (FPC No. 2204–30) General Arrangement, Transverse Section; Sheet 52–40 (FPC No. 2204–31) General Arrangement Longitudinal Sections; Sheet 52–47 (FPC No. 2204–32) West Dike, Plan-Profile-Sections.

Exhibit M: Two typewritten sheets entitled, "Exhibit M" giving a general description of the turbine, governor, generator, switching arrangement and transmission line.

(c) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(4) Public notice of the filing of the application was given as required by the Act. Except as recited above, no protests have been received. No conflicting application is before the Commission.

(5) The issuance of a license as hereinafter provided will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(6) The issuance of a license as hereinafter provided will not interfere or be inconsistent with any reservation or withdrawal of public lands.

(7) The project is best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, under the terms and conditions hereinafter imposed.

(8) The step-up substation adjacent to the powerhouse and the 69 kv transmission line mentioned in finding (3)(b) above are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(9) The installed horsepower capacity of the project hereinafter authorized for the purpose of completing the capacity component of the administrative annual charges is 4,000 horsepower.

(10) The amount of annual charges to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act, and for recompensing it of the use, occupancy and enjoyment of its lands, including transmission line right-of-way, is reasonable as hereinafter fixed and specified.

(11) The exhibits designated and described in finding (3) above conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to the City and County of Denver (Licensee) under Section 4(e) of the Federal Power Act for a period of 50 years, effective as of January 1, 1957, for the construction, operation, and maintenance of

Project No. 2204, upon the Williams Fork River and affecting lands of the United States, subject to the terms and conditions of the Federal Power Act, which is incorporated by reference as part of this license, subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act, and subject to the provisions of the Colorado River Compact.

(B) This license is also subject to the terms and conditions set forth in Form L–2, December 15, 1953, entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Lands of the United States" (17 FPC 62) which terms and conditions are attached hereto and made a part hereof, except for Articles 17, 20 and 21 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 25. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such fishways including fish traps, or ther fish handling facilities or fish protective devices and supporting facilities for artificial propagation and comply with such reasonable modifications of the project structures, and operation in the interest of fish life as may be prescribed hereafter by the Federal Power Commission upon its own motion or upon the recommendations of the Secretary of the Interior, or the Colorado Department of Fish and Game, after notice and opportunity for hearing and upon a finding based on substantial evidence that modifications are necessary and desirable, and consistent with the provisions of the Act.

Article 26. Whenever the United States shall desire, in connection with the project, to construct fish handling facilities or to improve the existing fish handling facilities at its expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such fish handling facilities or such improvements thereof. In addition, after notice and opportunity for hearing the Licensee shall modify the project operation as may be prescribed by the Commission, consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish handling facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish handling facilities or to relieve the Licensee of any obligation on the United States to construct or improve fish handling facilities or to relieve the Licensee of any obligation under this license.

Article 27. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically with such other power systems and in such manner as the Commission may direct in the interests of power and other beneficial public uses of water resources, the benefits of which shall be shared equitably by the participants in such coordination.

Article 28. The Licensee shall install additional capacity and make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 29. The Licensee shall pay to the United States the following annual charges:

(1) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part 11 of the Commission's regulations as in effect from time

to time. The authorized installed capacity for such purposes is 4,000 horsepower.

(ii) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands exclusive of those used for transmission line right-of-way purposes $890.40; and

(iii) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands for transmission line right-of-way purposes only, $6.01.

Article 30. The Licensee shall so far as is consistent with proper operation of the project, allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health and property, and Provided further, that the Licensee's consent to the construction of access roads, wharves landings and other facilities shall not without its express agreement place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that Licensee may construct and maintain as required by the license.

Article 31. The Licensee shall within one year from the date of issuance of this license file with the Commission a recreational use plan for the project which shall include not only recreational improvements which may be provided by others, but the recreational improvements the Licensee plans to provide.

(C) The exhibits designated and described in finding (3) above are hereby approved as part of this license.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NOS. G–4769, G–12948, G–17929, AND RP60–3

ORDER DENYING APPLICATION FOR REHEARING

(Issued January 31, 1963)

On January 2, 1963, El Paso Natural Gas Company (El Paso), petitioned for rehearing of the Secretary's letter of December 7, 1962, rejecting certain proposed tariff sheets tendered for filing December 3, 1962, and for rehearing of the Commission's telegram of December 17, 1962. El Paso further petitioned for rehearing of the letter of December 12, 1962, to the extent said letter constitutes, augments or embodies an order of the Commission.[1]

[1] Within the same pleading El Paso petitioned for rehearing of the order denying rehearing issued December 7, 1962. By letter from the Secretary dated January 11, 1963, that part of the pleading containing the petition was rejected.

The letter of December 7, 1962, rejected the tendered materials as they did not comply with the provisions of Commission Opinion No. 366, issued October 19, 1962, 28 FPC 688, as clarified by our order issued December 7, 1962, 28 FPC 952.[2] These tendered materials were based on exhibits and testimony offered as evidence by El Paso which were stricken from the record by the Examiner on objection of the Commission staff.

The letter of December 12, 1962 from the General Counsel was in reply to a telegram of December 10, 1962, addressed to him from El Paso inquiring as to the intent of the Commission's order of December 7, 1962. The General Counsel stated that it was his opinion that any use of the material appearing on transcript page 6093 reflecting a summary of Exhibit 131 which had been excluded from the record in these proceedings would be inappropriate and contrary to the intent of the orders in these proceedings. The Commission's telegram of December 17, 1962, stated that the procedure outlined in the General Counsel's letter of December 12, 1962 represented the determination of the Commission.

In support of its motion, El Paso only repeats its contention that the Commission erred by refusing to allow El Paso, for the purposes of computing rates, to employ the cost of service presented in these proceedings most favorable to it. In particular, El Paso points to testimony on transcript pages 6091–6093 relating to Exhibit 131 which was stricken by the Examiner, and upon appeal by El Paso was upheld by this Commission.

The arguments by El Paso are a reiteration of arguments made to this Commission and to the Fifth Circuit Court of Appeals by El Paso in its effort to obtain a stay of Opinion No. 366. El Paso has set forth no facts or principles of law which we have not fully considered before in these proceedings or which upon present consideration warrant any change or modification of our determinations in these matters. Accordingly, we find that El Paso's application for rehearing should be denied.

The Commission orders:

The application for rehearing filed by El Paso on January 2, 1963, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP62–65

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued January 31, 1963)

On September 14, 1961, El Paso Natural Gas Company (Applicant) filed in Docket No. CP62–65, an application pursuant to Section 7(b) of the Natural Gas Act, for authority to abandon certain facilities consisting of approximately 256 feet of 4½ inch O.D. pipeline, dehydrator and appurtenances located in Section 30, Township 1 North, Range 101 West, Rio Blanco County, Colorado.

The Applicant states that the facilities described were used to transport natural gas produced from the Phillips-Kadane-Morgan Government No. 1 Well by seven parties named in the application and sold to Applicant. The well became

[2] This clarification stated that there may be an inadvertent ambiguity in ordering paragraph (A) of Opinion 366, that the substitute filings and supporting data were to be computed on the basis of evidence offered and received in evidence and not to evidence rejected by the examiner when the rejection was upheld by the Commission.

incapable of producing gas and was plugged and abandoned thus rendering the facilities connected with it useless and not required by public convenience and necessity.

The dehydrator first above mentioned is to be removed and salvaged.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 15, 1963 respecting the matters involved in and the issues presented by the application. No petition to intervene or protest to the granting of the application has been received. Staff Counsel, moved orally at the hearing that the intermediate decision procedure be omitted and the Commission render a decision herein pursuant to Section 1.30(c) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a natural gas company within the meaning of the Natural Gas Act, as stated by Applicant in paragraph (II) of its application.

(2) The facilities proposed to be abandoned, as herein before described were authorized by the Commission in its order of July 23, 1959, in Docket No. G–13456 to be constructed and used by Pacific Northwest Pipeline Corporation, applicant's predecessor in interest.

(3) The available supply of natural gas from the well served by the facilities has become depleted to a degree that further operation of them is unwarranted and abondonment thereof should be permitted and approved.

(4) A request during the public hearing by Staff Counsel for omission of the intermediate decision procedure under Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure was unopposed by any party of record, and not having been denied by the Commission, is granted pursuant to Section 1.30 (c)(1) of the said rules.

The Commission orders:

(A) Applicant be and is hereby permitted to abandon the facilities as heretofore described, as more fully described in the application.

(B) Applicant shall advise the Commission as to the date of abandonment of the facilities within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

JOSEPH FRANCIS JANKE, JR. AND EARLE V. AUSMAN, PROJECT NO. 2314

ORDER DISMISSING APPLICATION FOR PRELIMINARY PERMIT

(Issued January 31, 1963)

Application was filed on May 2, 1962, by Joseph Francis Janke, Jr. and Earle V. Ausman (Applicants), Box 3274, Anchorage, Alaska, for a preliminary permit under Section 4(f) of the Federal Power Act for proposed Project No. 2314 to be located on the South Fork of Eagle River, Third Judicial Division, Alaska, approximately 8.5 miles northeast of Anchorage, and affecting lands of the United States.

According to the application, the proposed project would be a 130-kilowatt development which would be used to furnish power for homes in the area. On September 7, 1962, Congress approved Public Law 87–647 which amended the Federal Power Act by raising the installed horsepower capacity of a minor project from 100 horsepower to a maximum of 2,000 horsepower.

No construction is authorized under a preliminary permit. A preliminary permit gives the permittee, during the period of the permit, the right of priority of application for license while the permittee undertakes the necessary studies and examinations required by Section 9(b) of the Federal Power Act in order to determine the economic feasibility of the proposed project, the means of securing the necessary financial arrangements for construction, the market for power, and all other information necessary for inclusion in an application for license, should one be applied for under the permit. The problems covered by the provisions relating to preliminary permits are not present in connection with a minor project such as that proposed here. Under the Commission's rules and regulations in such cases, an applicant may proceed directly to file an application for a license which, if granted, will authorize construction.

While the application states that no lands of the United States would be occupied by the proposed project—proposed to be located in the SW¼SW¼, E½SW¼, section 21, and the W½W½, section 28, T. 14 N., R. 1 W., Seward Meridian—our records show that title to land in Applicant Janke's homestead entry (Anchorage 055015), located in the W½W½, section 28, remains in the United States, and would include 1.5 acres to be used for the project reservoir.

The Commission finds:

(1) Proposed Project No. 2314 would affect lands of the United States.

(2) A preliminary permit for proposed Project No. 2314 is not necessary or appropriate.

The Commission orders:

The aforesaid application for preliminary permit for proposed Project No. 2314 is hereby dismissed without prejudice to Applicants filing an application for license for a minor project.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Harold C. Woodward.

PORTLAND GENERAL ELECTRIC COMPANY, PROJECT NO. 2030

ORDER FURTHER EXTENDING TIME FOR FILING REVISED PROJECT EXHIBITS

(Issued January 31, 1963)

On August 20, 1962, Portland General Electric Company, licensee for major Project No. 2030, filed an application for a further extension of time within which to file revised Exhibits F and K for the Round Butte Development of the project, including the 230-kv transmission line. Extension is requested to within one year from the date of completion of the Round Butte Development, which date is specified in Article 29 of the license as September 1, 1965.

Article 31 of the license, as amended, provides that the licensee shall file revised Exhibits F and K for the Round Butte Development, other than the 230-kv transmission line, by September 1, 1962.

According to the application for further extension, it may require several months before all lands and rights-of-way are acquired since condemnation proceedings may be necessary in some instances; additional aerial photography is necessary; and the Forest Service has requested that certain proposed recreation areas be shown on the revised Exhibit K drawings.

Article 40 of the license requires the licensee to submit Exhibits F and K for the 230-kv transmission line extending from the Round Butte Development to Bethel Substation near Salem, Oregon, and provides that the licensee shall not

commence construction of that line until Commission approval of the exhibits. Pursuant to the article, supplemental Exhibit K maps showing the probable route of the line were filed and subsequently approved by Commission order issued December 1, 1961. This order authorized the route of the line insofar as it would effect National Forest and Indian lands, and the final routing of the line will be shown as provided in the following revised Article 31. The terms of Article 40 having been satisfied, the said article should be eliminated from the license as hereinafter provided.

The Commission finds:

A further extension of time as hereinafter provided is not inconsistent with the public interest.

The Commission orders:

(A) Article 31 of the license for Project No. 2030 is hereby further revised to read as follows:

Article 31. The licensee shall submit for Commission approval within one year from the date of completion of the Round Butte Development revised Exhibits F and K for the Round Butte Development, including the 230-kv transmission line, in accordance with the Commission's rules and regulations.

(B) Article 40 of the license for the project is hereby eliminated therefrom.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP63-86

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 31, 1963)

On October 8, 1962, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP63-86 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1963 and the operation of an unspecified number of metering and regulating stations and appurtenant facilities to enable Applicant to establish new and additional delivery points for the sale of natural gas to existing customers, at a total cost not to exceed a maximum of $200,000, with no single project to exceed a cost of $50,000, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in establishing new delivery points for existing customers for the delivery of authorized contract volumes of gas without the delay incident to the filing and processing of individual certificate applications.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 16, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of July 15, 1947, in Docket No. G–910 (6 FPC 777).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities to establish new delivery points for existing customers for the delivery of authorized contract volumes of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization hereinafter granted, a statement showing by projects: (a) a description of said project or projects, (b) location of said project or projects, (c) actual final costs, (d) name of customers served, (e) estimated annual and peak day deliveries, and (f) use to which the gas is to be put.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1963, the total expenditures for facilities to be constructed should be limited to a maximum of $200,000, with no single project to exceed a cost of $50,000, and deliveries through said facilities should be made only to existing customers within certificated delivery authorizations, providing that such customers have the necessary local and state authorizations.

(8) A request by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Under the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Tennessee Gas Transmission Company to construct during the calendar year 1963 the facilities hereinafter described, all as more fully described in the application in this proceeding, and to operate such facilities only to serve existing customers within certificated delivery authorizations, providing that such customers have the necessary local and state authorizations.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit within 60 days after the expiration of authorization hereinafter granted, a statement showing by projects: (a) a description of said project or projects, (b) location of said project or projects, (c) actual final costs, (d) name of customers served, (e) estimated annual and peak day deliveries, and (f) use to which the gas is to be put.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $200,000, with no single project to exceed a cost of $50,000.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CITY OF WRANGELL, ALASKA, PROJECT NO. 2313

ORDER ISSUING PRELIMINARY PERMIT

(Issued January 31, 1963)

Application was filed May 14, 1962, by the City of Wrangell, Alaska (Applicant) for a preliminary permit under Section 4(f) of the Federal Power Act (Act) for proposed Project No. 2313 to be located on Mill Creek, the outlet for Virginia Lake, a coastal stream discharging directly into Eastern Passage, in the First Judicial Division, State of Alaska, seven air miles east of Wrangell, and affecting lands of the United States within the Tongass National Forest.

As described in the application, the proposed project, to be known as the Virginia Lake Hydroelectric Project, would consist of: a dam 600 feet long across Mill Creek, about 900 feet downstream from the outlet of Virginia Lake, having a crest elevation at 145 feet and raising the lake elevation to 140 feet and providing 40,000 acre-feet of usable power storage; a fixed spillway; intake structure; 1,700-foot conduit to surge tank; 500-foot penstock to powerhouse containing a 4,000 horsepower turbine connected to a 3,000 kva generator; 1.25 miles of access road; 2 miles of submarine cable under Eastern Passage; 5 miles of conventional transmission line to City of Wrangell; and all other necessary appurtenances.

According to the application, the Virginia Lake Hydroelectric Project would replace Applicant's existing 880 kw diesel plant which will be retained as standby capacity. Energy from the project would be used and sold by Applicant for general utility purposes within the City of Wrangell and in the adjacent vicinity.

The Secretary of the Army and the Chief of Engineers have reported that the proposed project would not affect adversely navigation or flood control conditions in the area involved and no objections were offered to the issuance of a preliminary permit for the project.

The Department of the Interior has recommended a special condition in the interest of fish and wildlife for inclusion in any preliminary permit for the project.

The Department of Agriculture has reported it has no objection to the issuance of a preliminary permit for the project subject to the terms and conditions hereinafter imposed.

The Commission finds:

(1) Applicant is a municipal corporation organized under the laws of the State of Alaska.

(2) Public notice of the application has been given as required by the Act. No protests have been received. No conflicting application is before the Commission.

(3) The proposed project will affect lands of the United States, but will not affect any Government dam, and no reason is apparent at this time for development of the proposed project by the United States.

The Commission orders:

(A) This preliminary permit is hereby issued to the City of Wrangell, Alaska, for a period of 24 months, effective as of January 1, 1963, for the sole purpose of maintaining priority of application for license for Project No. 2313, to be located on Virginia Lake and Mill Creek, First Judicial Division Alaska, and affecting lands of the United States within the Tongass National Forest, subject to the terms and conditions of the Act, which is incorporated by reference as a part of this permit, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) This permit is also subject to the terms and conditions set forth in Form P–1 entitled "Terms and Conditions of Preliminary Permit" (16 F.P.C. 1303–1305), which terms and conditions (designated as Articles 1 through 8) are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

Article 9. The Permittee shall submit at the close of each six month period, from the effective date of the preliminary permit, to the Regional Engineer, Federal Power Commission, San Francisco, having supervision over the project, or to such other officer as the Commission may designate, accurate statements of the work accomplished during the period, and of the work contemplated under the preliminary permit for the ensuing period.

Article 10. The Permittee shall during the period of project planning cooperate with the U.S. Fish and Wildlife Service and the Alaska Department of Fish and Game, for the purpose of planning and designing adequate conservation measures: (1) to prevent loss of or damage to existing fish and wildlife resources, and (2) to develop and improve those resources where practicable.

Article 11. The Permittee shall, prior to undertaking any investigation work under this preliminary permit on National Forest lands, consult with the Regional Forester, United States Forest Service, Juneau, Alaska, or his representative, as to reasonable requirements relative to operations, field surveys, and explorations, and shall abide by such requirements; and shall cooperate with the United States Forest Service during the period of this permit to develop a plan for alleviation of damage to, and achieving maximum ultilization of, National Forest resources insofar as affected by the proposed project.

Article 12. The Permittee shall for the purpose of assuring the cooperation required by the terms of the permit, designate a liaison officer to act for the Permittee in keeping the several agencies specified in this permit currently informed, and such liaison officer shall communicate with such agencies within 60 days from the date of issuance of this permit.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this preliminary permit. In acknowledgment of the acceptance of this preliminary permit, it shall be signed for the Permittee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

AMERADA PETROLEUM CORPORATION, DOCKET NO. G-9385, ET AL.[1]

ORDER CONDITIONALLY APPROVING RATE SETTLEMENT PROPOSAL, SEVERING AND TERMINATING PROCEEDINGS AND PRESCRIBING REFUNDS

(Issued February 1, 1963)

There is now before us for consideration a Settlement Agreement filed on October 30, 1962, by Amerada Petroleum Corporation (Amerada), and two of the parties to these proceedings: The United Gas Improvement Company and Public Service Electric and Gas Company, encompassing the rates for 46 of Amerada's 82 currently effective gas rate schedules.[2] On November 5, 1962, the Long Island Lighting Company (Long Island) and on November 20, 1962, the Philadelphia Electric Company (Philadelphia Electric) filed comments on said Settlement Agreement. Long Island stated that the Settlement Agreement appeared to be deficient in regard to the agreed upon rate for one rate schedule (Rate Schedule No. 65) and the proposed disposition of three temporary certificates covering sales made under Rate Schedule Nos. 90, 91 and 96. However, Long Island stated that: "notwithstanding the foregoing comments, Long Island does not oppose approval of the Settlement Agreement." Philadelphia Electric's response was in the main directed to the same "deficiencies" commented upon by Long Island, although Philadelphia Electric did comment adversely on certain other provisions of the Settlement Agreement. Accordingly Philadelphia Electric, as it has done in respect to other settlement agreements, stated that it could not agree to the instant Settlement Agreement.

On November 29, 1962, the Public Service Commission of the State of New York (PSC) filed its response to the Settlement Agreement wherein it stated that it was in substantial agreement with the responses of Long Island and Philadelphia Electric.

The rate which was agreed to under Rate Schedule No. 65, which covers a sale by Amerada to United Gas Pipe Line Company (United Gas) in the South Elton Field in Southern Louisiana, upon which comment was made, is the one exception to this Commission's applicable area ceilings of all of the rates proposed to be charged by Amerada for sales of natural gas in interstate commerce encompassed in the Settlement Agreement. Initially, Amerada entered into a contract with United Gas for the sale of gas from South Elton at a price of 7¢ per Mcf, exclusive of tax, for a term of two years, and on a month to month basis thereafter. The sale was made on a short-term basis because Amerada had been advised by another prospective purchaser that when the necessary facilities were installed it would purchase the gas from Amerada at a price of 18¼¢ per Mcf. When the prospective purchaser installed the facilities, it entered into a contract for the purchase of gas at 18¼¢ from another producer at South Elton which had also been selling to United Gas under a contract similar to that of Amerada. However, when Amerada sought permission from this Commission to terminate

[1] The additional dockets involved herein are set forth in Appendix A hereto.

[2] Excluded from the Settlement Agreement are 25 sales of natural gas made by Amerada in the Permian Basin, two sales made in South Louisiana (consolidated with *Coastal Transmission Company, et al.*, Docket No. G-18338, *et al.*) and any sales where deliveries had not commenced before July 1, 1962.

sales to United Gas so as to sell gas to the other purchaser in the area it was not granted. Thereafter, Amerada and United Gas entered into renegotiation conferences wherein Amerada agreed to commit additional gas reserves to United Gas in the South Lewisburg Field and a new contract for the South Elton sales was agreed upon. The price agreed upon in the second contract was 18.5¢ per Mcf, exclusive of tax. Upon consideration all of the circumstances set forth above, and others set forth with particularity in the Settlement Agreement, we find them to be very similar to others where we have in particular instances regarded the second contract to be in the nature of an initial sales contract, *Tidewater Oil Company, et al.*, Docket No. G–13310, *et al.*, 27 FPC 1267 (Order issued June 15, 1962); *Cities Service Company, et al.*, Docket No. G–8921, *et al.*, 28 FPC 1108 (Order issued December 26, 1962) and orders cited therein. Therefore, we find the settlement rate of 18¢ per Mcf, including tax reimbursement, which is substantially below our ceiling for initial rates in South Louisiana to be proper and approve the same.

In regard to Rate Schedule Nos. 90, 91 and 96 (Docket Nos. CI61–727, CI62–525 and CI62–216 respectively) for which issuance of related permanent certificates is pending, and service is being rendered under temporary authorizations, such certificate applications have been, by order issued December 31, 1962, consolidated with the proceedings in *Union Texas Petrolcum, et al.*, Docket No. G–13221, *et al.* In said consolidated proceeding we propose to determine the proper initial prices for the sales of gas in interstate commerce from the South Louisiana area for the sales involved therein. We shall approve the present settlement proposal conditioned on Amerada's agreement to reduce its rates under its Rate Schedule Nos. 90, 91 and 96 on the effective date of this order to the level proposed in the settlement agreement, and its further agreement that the rates under such rate schedules shall be subject to final determination in the Union Texas proceeding. If by final order in the Union Texas proceeding a lower rate is established than that set forth in the settlement agreement Amerada shall make further refunds from the date of this order of the difference between the settlement rate and the rate ordered in the *Union Texas* proceeding. The refund requirements imposed as a condition of this settlement order shall not be construed to affect or limit the positions of the parties in the *Union Texas* proceeding with respect to refund obligations under temporary authorizations.

The Settlement Agreement also includes other rates (Rate Schedule Nos. 64, 88, 93 and 99, Docket Nos. G–14116, CI60–688, CI61–1289 and CI62–1107 respectively) for which issuance of related permanent certificates is pending, and service is being rendered under temporary authorizations. Additionally, Docket Nos. G–14116 and CI60–688 have been consolidated in the Union Texas consolidated proceedings. We propose, therefore, to sever such proceedings from the proceedings in *Union Texas, supra*, and to set such proceedings along with those in Docket Nos. CI61–1289 and CI62–1107 for abridged hearing in accordance with Section 7 of the Natural Gas Act indicating that the proposed initial price is the settlement price.

In summary, the settlement proposal otherwise provides:

(1) Amerada waives the right to file for contractually authorized increased rates until November 1, 1964, except as provided in paragraph 5 below, and excepting further that with respect to Rate Schedule Nos. 65 and 88 there is a moratorium on all increased rate filings until July 1, 1967:

(2) Amendment of Amerada's Rate Schedule Nos. 46, 53 and 81 to eliminate any favored nation, price redetermination or periodic price escalation clauses contained therein:

(3) Refunds, with interest at the applicable rate, under all rate schedules where collection were made subject to refund, the difference between the revenues actually received and those which would have been received at the proposed settlement rate, in each instance, commencing with July 1, 1960, to the date of the issuance of this order.

(4) Extension of the make-up clauses in the take-or-pay provisions contained in Rate Schedules Nos. 64 and 65 from two to five years;

(5) Retention by Amerada of the right to file for any increased rates, if contractually authorized, up to the applicable area-rate levels determined through area hearings or by amendment of the Commission's Statement of General Policy No. 61–1, except as to Rate Schedule Nos. 46, 53 and 81, and to reflect increases in taxes where contractually authorized, except as to Rate Schedule Nos. 65 and 88.

With respect to refunds, the July 1, 1960 commencement date is based upon Amerada's revenue-cost relationship for recent years as found by the parties to the Settlement Agreement utilizing cost-of-service studies. Such studies revealed that during 1960, increased sales and higher initial rates started to equalize Amerada's revenue-cost relationship, and that about mid-year its jurisdictional revenues began to exceed its jurisdictional costs. In view of that, and all the terms of the Settlement Agreement, it is appropriate that refunds should be computed for sales made on and after July 1, 1960 to and including the date of issuance of this order, as provided in the Settlement Agreement.

In view of our action regarding Rate Schedule Nos. 90, 91 and 96, set forth above, we believe that the comments filed by Long Island, Philadelphia Electric and PSC have been duly recognized, and that the instant Settlement Proposal as herein modified, and in other particulars not specifically noted herein, meets the criteria previously set forth in other of our recent settlement orders,[3] and accordingly we find it to be in the public interest and should be approved as hereinafter provided.

On April 9, 1962, a decision was issued by the presiding examiner in Docket No. G–9385 *et al.*, regarding Amerada's rates for sales of natural gas in interstate commerce. Without passing on the validity of the decision, we find that the public interest will best be served by approving the settlement agreement as herein modified. The examiner's decision accordingly becomes moot.

Our action herein should not be construed, nor may it be, as constituting approval of any future rate increase, if any, that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate proceedings, involving Amerada's rates and rate schedules.

The Commission finds:

(1) The proposed settlement of the subject proceedings on the basis described herein, as more fully set forth in the Settlement Agreement filed on October

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[3] See *Cities Service Company, et al.*, Docket No. G–8921, *et al.*, 28 FPC 1108, order issued December 26, 1962, and the orders cited therein.

30, 1962, as herein modified, is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that it be conditionally approved and conditionally made effective subject to the modifications hereinafter ordered.

(2) Good cause exists for approving the settlement rates, for severing and terminating certain proceedings, for severing certain other proceedings, and providing for refunds.

The Commission orders:

(A) The settlement of these proceedings on the basis of the Settlement Agreement, filed October 30, 1962, as herein modified, is approved and made effective subject to the following terms and conditions.

(B) The applicable settlement rates set out in Appendix A hereto are approved and shall be effective as of the date of issuance of this order.

(C) The pending certificate proceedings indicated in Appendix A hereto shall not be terminated on the basis of the approval of the Settlement Agreement, but shall be determined after hearing in accordance with Section 7 of the Natural Gas Act.

(D) Amerada shall, over the signature of a responsible officer, file with the Commission, within 30 days from the date of the issuance of this order, an original and one copy of its acceptance or rejection of the terms and conditions of this order, including specifically the requirement for possible future refunds under its FPC Gas Rate Schedule Nos. 90, 91 and 96.

(E) Within 90 days from the date of this order, Amerada shall make such filings under its rate schedules as are required to make effective the terms of the Settlement Agreement, as modified herein.

(F) Within 90 days from the date of this order, Amerada shall (1) refund, with interest as specified in each docket computed to the date of actual refund, the difference between the rates collected subject to refund on and after July 1, 1960 and the related settlement rates to the date of this order; and (2) report to the Commission, in writing, the amount of refunds made to each of its purchasers, showing separately the amount of principal and interest so paid, and the bases used for such determination, together with releases from its purchasers showing receipt of the refunds in conformity with the Settlement Agreement as modified and approved herein.

(G) Docket Nos. G–17538, G–17539, RI60–18, RI62–222, RI62–282, RI62–288 and RI62–289 are hereby severed from the consolidated proceedings in Docket No. AR61–2, *et al.*

(H) Docket Nos. G–14116 and CI60–688 are hereby severed from the consolidated proceedings in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*

(I) Upon full compliance by Amerada with all the terms and provisions of this order the Section 4(e) proceedings listed in Appendix A hereof and the Section 5(a) proceeding in Docket No. G–18634 shall terminate.

(J) This order is without prejudice to any findings or orders which have been, or may be, made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Amerada, the Commission staff, or any affected party hereto, in any proceedings now pending, or hereafter instituted by or against Amerada, or any other companies, person or parties affected by this order.

Commissioner Morgan *not participating.*

APPENDIX A

Rate schedule No.	Area and field	Purchaser	Last firm rate [1]	Rate in effect on 9-1-62 [1]	Settlement rate [1]	Docket numbers	
						Certificate	Sec. 4(e) rate increase
	Texas District No. 1						
60	Tilden-Lowe Ranch	Transcontinental Gas Pipe Line Corp.	14.19	14.19	14.19	G-11804	----------
	Texas District No. 2						
6	Riverdale and Dial	Texas Eastern Transmission Corp.	11.1232	13.8733	13.8733	G-4773	G-14618
21	Gottschalk	United Gas Pipe Line Co.	7.60	7.6	7.6	[2] G-4785	----------
44	Melrose	Texas Eastern Transmission Corp.	11.93216	11.93216	11.93216	G-9516	----------
46	Bloomington	Natural Gas Pipe Line Co. of America.	13.0	15.33333	15	G-9729	RI61-407
66	Mission Bridge Area	Transcontinental Gas Pipe Line Corp.	7.0945	7.0945	7.0945	G-14222	----------
	Texas District No. 5						
7	Chesterville	Tennessee Gas Transmission Co.	13.2782	15.95016	14	G-4774	G-18843
8	Fairbanks	Natural Gas P/L Co. of America.	15.34592	17.16310	15.34592	G-4775	G-9385 G 10999 G-12882 G 15997
	Texas District No. 6						
53	Carthage	Texas Eastern Transmission Corp.	12.3	15.2	15	G-16505	G-13401 G-16662 G-19606 RI61-99 RI62-59
81	Cherokee Lake	do	14.6	15.2	15.0	G-18504	G-19732 RI61-99 RI62-59
87	Willow Springs	do	14.6	14.6	14.6	G-20586	----------
89	Manziel	Arkansas Louisiana Gas Co.	12.51	12.51	12.51	CI60-810	----------
	South Louisiana						
9	South Lewisburg	Texas Gas Transmission Corp.	9.8967	23.25	15.75	G-4776	G-11882 G-17538 RI62-289
11	do	do	9.8967	23.25	15.75	G-4776	G-11883 G-17539 RI62-288
12	do	do	9.8967	23.25	15.75	G-4776	G-11883 G-17538 RI62-282
13	do	do	9.8967	23.25	15.75	G-4776	G-11883 G-17539 RI62-288
14	Mallard Bay	Trunkline Gas Co	11.0368	23.27507	15.75	G-4778	RI60-18
48	Leleux	Transcontinental Gas Pipe Line Corp.	17.5	23.55	17.5	G-9901	G-17730
64	South Lewisburg	United Gas Pipe Line Co.	20.25	22.25	20.00	[3] [4] G-14116	RI62-312
65	South Elton	do	8.75	22.25	18.0	G-4780	G-14421 RI62-222
88	Raceland	Transcontinental Gas Pipe Line Corp.	23.55	23.55	20.625	[5] CI60-688	----------
90	Bayou Cheivreuil	Texas Gas Transmission Corp.	21.75	23.25	21.25	[5] CI61-727	RI62-222
91	Lac Blanc	Tennessee Gas Transmission Co.	21.25	21.25	21.25	[5] CI62-525	----------
96	Veltin	American Louisiana Pipe Line Co.	21.25	21.25	21.25	[5] CI62-216	----------

See footnotes at end of table.

APPENDIX A—Continued

Rate schedule No.	Area and field	Purchaser	Last firm rate [1]	Rate in effect on 9-1-62 [1]	Settlement rate [1]	Docket numbers	
						Certificate	Sec. 4(e) rate increase
	Other—Oklahoma						
24	West Edmond	Cities Service Gas Co.	10.5	10.5	10.5	G-6313	
29	Velma	Lone Star Gas Co.	11.0	16.8	11.0	G-6326	RI61-510
71	West Cement	Natural Gas Pipe Line Co. of America	15.0	15.0	15.0	G-16029	
94	West Velma	Lone Star Gas Co.	15.0	15.0	15.0	CI61-1650	
97	Stage Stand	do	15.0	15.0	15.0	CI62-593	
	Panhandle Area—Oklahoma						
93	Southwest Camp Creek	Colorado Interstate Gas Co.	17.0	17.0	17.0	[3] CI61-1289	
	Kansas						
23	Greenwood	do	12.0	16.0	12.0	G-6312 G-8497	G-17441
42	do	do	15.0	16.0	15.0	G-9314	G-17441
43	Elwood and Hardtner.	Cities Service Gas Co.	12.0	13.0	12.0	G-9488 G-13303	G-20076
52	Hugoton	Colorado Interstate Gas Co.	11.0	12.5	11.0	G-10428	G-17719
59	do	Cities Service Gas Co.	12.0	12.0	12.0	[4] G-11759	
73	Southwest Lerado Area.	Panhandle Eastern Pipe Line Co.	13.0	13.0	13.0	G-17039	
75	Hopewell	do	15.0	15.0	15.0	G-19098	
	San Juan Basin—New Mexico						
2	Blanco	El Paso Natural Gas Co.	12.0	12.0	12.0	G-4484 G-10117	
49	Otero-J. Apache Area (Deep).	do	12.0	12.0	12.0	G-9917 G-10432	
50	Otero-J. Apache Area (Shallow).	do	11.0	11.0	11.0	G-10006 G-10433	
76	Bisti	do	13.0	13.0	13.0	G-19388	
	Colorado						
25	Ignacio	do	13.0	13.0	13.0	G-6319 G-10243	
26	do	do	13.0	13.0	13.0	G-6320	
54	do	do	13.0	13.0	13.0	G-11175	
78	Jackpot	Kansas-Nebraska Natural Gas Co., Inc.	10.0	10.0	10.0	[4] G-17473	
99	Ignacio	El Paso Natural Gas Co.	12.0	12.0	12.0	[7] CI62-1107	
	North Dakota						
41	Beaver-Lodge	Montana-Dakota Utilities Co.	9.02	9.02	9.02	[8] G-9190 [8] G-14890	

[1] Unless otherwise indicated, all rates are expressed in cents per Mcf at a pressure base of 14.65 psia, except in Louisiana, Colorado and New Mexico, where the pressure base is 15.025 psia. All rates include tax reimbursement.

[2] The Commission's order of June 8, 1962, granted Amerada's application for abandonment, cancelled its certificate and terminated this rate schedule.

[3] Gas from a portion of the acreage included in this rate schedule is being sold under temporary authority.

[4] Temporary certificate amendment filed Dec. 5, 1960.

[5] Temporary certificate.

[6] Pressure base is 16.4 psia.

[7] Temporary certificate.

[8] Pressure base is 14.73 psia.

The general rate investigation instituted against Amerada on June 2 1959, was assigned Docket No. G-18634.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP61-284; UNITED NATURAL GAS COMPANY, DOCKET NO. CP61-284; NORTH PENN GAS COMPANY, DOCKET NO. CP61-284; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, CP61-292; TEXAS EASTERN TRANSMISSION CORPORATION, CP62-214; NEW YORK STATE NATURAL GAS CORPORATION, CP62-250; NEW YORK STATE NATURAL GAS CORPORATION, CP62-275; TENNESSEE GAS TRANSMISSION COMPANY, CP62-275; UNITED NATURAL GAS COMPANY, CP62-275; THE SYLVANIA CORPORATION, CP62-276

ORDER AMENDING FINDINGS AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued February 1, 1963)

On January 18, 1963, 29 FPC 119, the Commission issued its order in the consolidated proceeding as captioned above.

It appears that the commodity rate for natural gas applicable to sales by Tennessee Gas Transmission Company under its Rate Schedule CD-4 quoted in parentheses in the third full paragraph on page 5 of said order did not take cognizance of the recent settlement which reduced said price from the 29.1¢ per Mcf there quoted to the present agreed price of 28.8¢ per Mcf.

It further appears that finding paragraph (8) on page 7 and ordering paragraph (A) on page 9 of said order inadvertently omitted the names of Tennessee Gas Transmission Company (Tennessee) and United Natural Gas Company (United) who were joint Applicants with New York State Natural Gas Corporation (New York Natural) in Docket No. CP62-275.

Also, finding paragraph (9) and ordering paragraph (A) of said order should have included specific reference to the sales of natural gas and the storage services for which authorization was requested by certain of the Applicants.

The Commission finds:

It is appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order of the Commission issued on January 18, 1963, in Docket No. CP61-284, *et al.* be amended as hereinafter ordered.

The Commission orders:

(A) The price of "29.1¢ per Mcf" quoted in parentheses in Line 4 of the third full paragraph on page 5 of the Commission's order issued on January 18, 1963, in Docket No. CP61-284, *et al.* be and the same is hereby changed to read "28.8¢ per Mcf."

(B) Finding paragraph (8) on page 7 of the aforesaid order be and the same is hereby amended to read as follows (italics in the following three paragraphs indicates additions and appropriate slight word changes in the original paragraphs):

(8) The facilities to be constructed and operated by Transco, United and North Penn in Docket No. CP61–284; by Transco in Docket No. CP61–292; by Texas Eastern in Docket No. CP62–214; by New York Natural in Docket No. CP62–250; to be constructed, operated *or* acquired by New York Natural, *Tennessee and United* in Docket No. CP62–275; and to be relocated by Sylvania in Docket No. CP62–276, all as hereinbefore described and as more fully described in the respective applications herein, as supplemented and amended, are proposed to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, as integral parts of the existing pipeline systems and operations of the respective Applicants, *and the sales and storage services to be rendered by the aforesaid Applicants in the aforesaid Dockets respectively, are proposed to be made in interstate commerce, subject to the jurisdiction of the Commission*, and *such* construction, operation, acquisition, relocation, *sales and storage services*, respectively, by Applicants, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(C) Finding paragraph (9) on page 8 of the aforesaid order be and the same is hereby amended to read as follows:

(9) The construction, operation, acquisition and relocation of the proposed facilities, *and the sales and storage services to be rendered*, respectively, by Applicants are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(D) Ordering paragraph (A) on page 9 of the aforesaid order be and the same is hereby amended to read as follows:

(A) Certificates of public convenience and necessity be and the same are hereby issued *to* Transco, United and North Penn in Docket No. CP61–284, *to* Transco in Docket No. CP61–292, *to* Texas Eastern in Docket No. CP62–214, *to* New York Natural in Docket No. CP62–250, *to* New York Natural, *Tennessee and United* in Docket No. CP62–275, and *to* Sylvania in Docket No. CP62–276, respectively, *authorizing the construction, operations, acquisitions, relocation, sales and storage services*, all as hereinbefore described and as more fully described in the respective applications, as supplemented and amended, for the transportation and sale of natural gas in interstate commerce as therein set forth, upon the terms and conditions of this order.

(E) In all other respects, the aforesaid order of the Commission issued on January 18, 1963, in Docket No. CP61–284, *et al.* shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

YUCCA PETROLEUM CO., DOCKET NO. RI63–251

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued February 1, 1963)

Yucca Petroleum Co. (Yucca) on January 4, 1963 filed a motion for reconsideration of the Commission's order issued December 19, 1962 [in Shell Oil Co.

(Operator), *et al.*, Docket No. RI63–235, *et al.*] in the above-entitled proceeding wherein Supplement No. 5 to Yucca's FPC Gas Rate Schedule No. 5 was suspended until May 27, 1963 and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

In its motion Yucca requests that the suspension period for its proposed rate be limited to one day. In support thereof, Yucca states that as a contractual matter the rate increase was to become effective December 10, 1961 and that another producer selling gas pursuant to the same contract has been collecting the same increase in rate, subject to refund, under another rate schedule since May 1, 1962.

In our view, a lesser suspension period than the five month suspension period permitted under Section 4(e) of the Natural Gas Act should not be authorized except in those instances when strong equitable considerations dictate that a shortened suspension period is warranted. Such considerations are not involved here. The mere fact that Yucca under its contract could have filed for the subject rate increase at an earlier date, but failed to do so, does not warrant a shortening of the suspension period herein. Nor does the fact that another producer selling gas pursuant to the same contract took the necessary steps to place the same rate increase in effect subject to refund at an earlier date provide sufficient justification for a shortened suspension period.

The Commission finds:

For the reasons set forth above, Yucca's motion for reconsideration should be denied.

The Commission orders:

Yucca's motion for reconsideration filed on January 4, 1963, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MILLS BENNETT ESTATE, ET AL., DOCKET NO. RI63–308, ET AL.*

ORDER PROVIDING FOR HEARINGS ON AND SUSPENSION OF PROPOSED CHANGES IN RATES [1]

(Issued February 4, 1963)

The above-named Respondents have tendered for filing proposed changes in presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. All of the sales are made at a pressure base of 14.65 psia. The proposed changes, which constitute increased rates and charges, are designated as follows:

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[1] This order does not provide for the consolidation for hearing or disposition of the several matters covered herein, nor should it be so construed.

*Additional respondents and docket numbers omitted in printing.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until	Cents per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI63-308	Mills Bennett Estate, 2001 Southern National Bank Bldg., Houston 2, Tex. Attn: Mr. R. A. Van Eaton.	1	15	Texas Eastern Transmission Corp. (San Domingo Field, Bee County, Tex.) (R.R. District No. 2).	$808	12-10-62	[1] 2-5-63	7-5-63	13.8733	[2] 14.3733	
	Mills Bennett Estate	2	15	Texas Eastern Transmission Corp. (Strauch-Wilcox Field, Bee County, Tex.) (R.R. District No. 2).	1,122	12-10-62	[1] 2-5-63	7-5-63	13.8733	[2] 14.3733	
	do	3	15	do	122	12-10-62	[1] 2-5-63	7-5-63	13.8733	14.3733	
	do	4	14	Texas Eastern Transmission Corp (San Domingo Field, Bee County, Tex.) (R.R. District No. 2).	411	12-10-62	[1] 2-5-63	7-5-63	13.8733	[2] 14.3733	
RI63-309	W. C. McBride, Inc. (Operator), et al., 25 North Brentwood Blvd., St. Louis 5, Mo.	6	9	Texas Eastern Transmission Corp (West Weesatchee Field, Goliad County, Tex.) (R.R. District No. 2).	1,601	12-11-62	[1] 2-5-63	7-5-63	13.8733	[2] 14.3733	
RI63-310	Harkins & Co. (operator), et al., P.O. Box 1490, Alice, Tex.	2	3	Texas Eastern Transmission Corp. (North Arneckeville Field, DeWitt County, Tex.) (R.R. District No. 2).	1,000	12-10-62	[1] 2-5-63	7-5-63	[3] 13.8733	[2] 14.3733	
RI63-311	The Atlantic Refining Co., P O. Box 2819, Dallas 21, Tex.	35	18	Texas Eastern Transmission Corp. (Meyersville Field, DeWitt County, Tex.) (R.R. District No. 2).	218	12-7-62	[1] 2-5-63	7-5-63	13.8733	[2] 14.3733	
	The Atlantic Refining Co	37	15	Texas Eastern Transmission Corp. (Jennie Bell Field, DeWitt County, Tex.) (R.R. District No. 2).	2,170	12-7-62	[1] 2-5-63	7-5-63	13.8733	[2] 14.3733	
	do	134	9	Texas Eastern Transmission Corp. (Meyersville Field, DeWitt & Goliad Counties, Tex.) (R.R. District No. 2).	385	12-7-62	[1] 2-5-63	7-5-63	13.8733	[2] 14.3733	
	do	161	8	Texas Eastern Transmission Corp. (Cabeza Creek Field, Goliad County, Tex.) (R.R. District No. 2).	867	12-7-62	[1] 2-5-63	7-5-63	13.8733	[2] 14.3733	
	do	38	13	Texas Eastern Transmission Corp. (Rhode Ranch Field, Duval & McMullen Counties, Tex.) (R.R. Districts Nos. 4 and 1).	66	12-7-62	[1] 2-5-63	7-5-63	[4] 13.8733	[2] [4] 14.3733	

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until	Cents per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI63-312	The Atlantic Refining Co. (operator) et al.	36	16	Texas Eastern Transmission Corp. (San Domingo Field, Bee County, Tex.) (R.R. District No. 2).	1,676	12- 7-62	[1] 2-5-63	7-5-63	13.8733	[2] 14.3733	
	do	160	19	Texas Eastern Transmission Corp. (Chicolete Creek, et al. Fields, DeWitt, McMullen, et al. counties, Tex.) (R.R. Districts Nos. 2 and 1)	10,122	12- 7-62	[1] 2-5-63	7-5-63	[4] 14.3733	[3] [4] 14.8733	
RI63-313	Continental Oil Co. P.O. Box 2197, Houston 1, Tex. Attn: Mr. Fred B. Willson.	84	11	Texas Eastern Transmission Corp. (Myersville Field, DeWitt County, Tex.) (R.R. District No. 2).	406	12-14-62	[1] 2-5-63	7-5-63	13.8733	[2] 14.3733	
	Continental Oil Co	137	11	Texas Eastern Transmission Corp. (Meyersville Field, DeWitt, Goliad and Victoria Counties, Tex.) (R.R. District No. 2).	767	12-17-62	[1] 2-5-63	7-5-63	13.8733	[2] 14.3733	
	do	139	7	Texas Eastern Transmission Corp. (Cabeza Creek Field, Goliad County, Tex.) (R.R. District No. 2).	569	12-17-62	[1] 2-5-63	7-5-63	13.8733	[2] 14.3733	
	do	141	9	Texas Eastern Transmission Corp. (Meyersville & East Meyersville Fields, DeWitt, Goliad, & Victoria Counties, Tex.) (R.R. District No. 2).	7,972	12-17-62	[1] 2-5-63	7-5-63	[4] 13.8733	[3] [4] 14.3733	
	do	114	14	Texas Eastern Transmission Corp. (Meyersville Field, DeWitt County, Tex.) (R.R. District No. 2).	643	12-14-62	[1] 2-5-63	7-5-63	13.8733	[2] 14.3733	
	do	125	16	Texas Eastern Transmission Corp. (Helen Gohlke Field, DeWitt & Victoria Counties, Tex.) (R.R. District No. 2).	670	12-18-62	[1] 2-5-63	7-5-63	14.3733	[2] 14.8733	
RI63-314	Bright & Schiff, 205 Mercantile Continental Bldg., Dallas 1, Tex.	1	9	Texas Eastern Transmission Corp (South Karon & Ragsdale Fields, Bee County, Tex.) (R.R. District No. 2).	3,000	11-23-62	[1] 2-5-63	7-5-63	13.8733	[2] 14.3733	

RI63-315	Sinclair Oil & Gas Co., P.O. Box 521, Tulsa 2, Okla.	67	12	Texas Eastern Transmission Corp. (Karon Field, Live Oak County, Tex.) (R.R. District No. 2).	435	11-20-62	[1] 2-5-63	7-5-63	13.8733	[2] 14.3733	
RI63-316	H. B. Zachry Co. (operator), et al., 1101 Transit Tower, San Antonio, Tex.	2	14	Texas Eastern Transmission Corp. (Holzmark-Wilcox Field, Bee County, Tex.) (R.R. District No. 2).	1,244	11-20-62	[1] 2-5-63	7-5-63	13.8733	[2] 14.3733	
RI63-317	Skelly Oil Co., P.O. Box 1650, Tulsa, Okla.	29	11	Texas Eastern Transmission Corp. (Mineral Field, Bee County, Tex.) (R.R. District No. 2).	646	12- 3-62	[1] 2-5-63	7-5-63	13.8733	[2] 14.3733	
RI63-318	General American Oil Co. of Texas (operator), et al., Meadows Bldg., Dallas 6, Tex.	18	9	Texas Eastern Transmission Corp. (Arneckeville Field, DeWitt County, Tex.) (R.R. District No. 2).	893	12- 3-62	[1] 2-5-63	7-5-63	13.8733	[2] 14.3733	
	General American Oil Co., of Texas (operator), et al.	19	9	Texas Eastern Transmission Corp. (North Arneckeville Field, DeWitt County, Tex.) (R.R. District No. 2).	2,147	12- 3-62	[1] 2-5-63	7-5-63	13.8733	[2] 14.3733	
RI63-319	Phillips Petroleum Co., et al., Bartlesville, Okla.	37	13	Texas Eastern Transmission Corp. (Henze Field, DeWitt County, Tex.) (R.R. District No. 2).	444	12-17-62	[1] 2-5-63	7-5-63	[7] 13.8733	[2] [7] 14.3733	
RI63-320	Phillips Petroleum Co	281	10	Texas Eastern Transmission Corp. (West George West Field, Live Oak County, Tex.) (R.R. District No. 2).	140	12-17-62	[1] 2-5-63	7-5-63	[8] 14.3733	[3] [8] 14.8733	
RI63-321	Peet Oil Co., Suite 814, First National Bank Bldg., San Antonio 5, Tex.	4	8	----do----	322	12-17-62	[1] 2-5-63	7-5-63	[8] 14.3733	[3] [8] 14.8733	
RI63-322	Edwin M. Jones Oil Co. (operator), et al., 404 Milam Bldg., San Antonio, Tex.	[5] 5	8	Texas Eastern Transmission Corp. (Dunn Field, Live Oak County, Tex.) (R.R. District No. 2).	2,038	12-26-63	[1] 2-5-63	7-5-63	[4] [6] 13.8733	[2] [4] [6] 14.3733	
RI63-323	Edwin M. Jones Oil Co., et al.	[5] 7	11	Texas Eastern Transmission Corp. (West George West Field, Live Oak County, Tex.) (R.R. District No. 2).	314	12-26-62	[1] 2-5-63	7-5-63	[4] [8] 14.3733	[2] [4] 14.8733	
RI63-324	Northern Pump Co. (operator), et al., Columbia Heights Post Office, Minneapolis 21, Minn.	25	6	Texas Eastern Transmission Corp. (West Cosden Field, Bee County, Tex.) (R.R. District No. 2).	473	1- 4-63	[1] 2-5-63	7-5-63	[4] 13.8733	[2] [4] 14.3733	
	Northern Pump Co. (operator), et al.	3	8	----do----	1,103	1- 4-63	[1] 2-5-63	7-5-63	[4] 13.8733	[2] [4] 14.3733	

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until	Cents per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI63-325	Union Texas Petroleum, a Division of Allied Chemical Corp., 811 Rusk Ave., Houston 2, Tex.	14	12	Texas Eastern Transmission Corp. (Strauch-Wilcox Field, Bee County, Tex.) (R.R. District No. 2).	1,122	1- 4-63	[1] 2- 5-63	7- 5-63	[4] 13.8733	[2 4] 14.3733	
	Union Texas Petroleum, a Division of Allied Chemical Corp.	15	12	do	122	1- 4-63	[1] 2- 5-63	7- 5-63	[4] 13.8733	[2 4] 14.3733	
	do	16	12	Texas Eastern Transmission Corp. (San Domingo Field, Bee County, Tex.) (R.R. District No. 2).	808	1- 4-63	[1] 2- 5-63	7- 5-63	[4] 13.8733	[2 4] 14.3733	
	do	20	10	do	411	1-4 -63	[1] 2- 5-63	7- 5-63	[4] 13.8733	[2 4] 14.3733	
RI63-326	Emerald Oil & Carbonic Co. (operator), et al., 1627 Milam Bldg., San Antonio, Tex.	2	8	Texas Eastern Transmission Corp. (Salem Field, Victoria County, Tex.) (R.R. District No. 2).	2,159	1-4 -63	[1] 2- 5-63	7- 5-63	13.8733	[3] 14.3733	
RI63-327	T. C. Huddle, et al., D-406 Petroleum Center, 900 N.E. Military Dr., San Antonio 9, Tex.	1	7	Texas Eastern Transmission Corp. (Meyersville Field, Goliad & DeWitt Counties, Tex.) (R.R. District No. 2).	1,171	1- 7-63	[9] 2- 7-63	7- 7-63	[4] 13.8733	[2 4] 14.3733	
RI63-328	T. C. Huddle (operator), et al.	2	11	Texas Eastern Transmission Corp. (Minoak Field, Bee County, Tex.) (R.R. District No. 2).	992	1- 7-63	[9] 2- 7-63	7- 7-63	[4] 13.8733	[2 4] 14.3733	

[1] The stated effective date is the effective date proposed by Respondent.
[2] Periodic rate increase.
[3] Subject to downward Btu adjustment below 1,000 Btu's.
[4] Subject to 1.0¢ per Mcf compression charge if buyer compresses gas.
[5] Includes 0.5¢ per Mcf for dehydration of gas.
[6] Pertains to sales of gas from all but M.E. Cooley Lease and A. Coutret Lease.
[7] Subject to compression charge of 0.5¢ per Mcf deducted by Unit Operator to Seller.
[8] Involved in succession proceedings (predecessor is Henrietta Yerger Jones).
[9] The stated effective date is the first day after expiration of the required statutory notice.

The proposed increased rates and charges exceed the applicable area price levels set forth in the Commission's Statement of General Policy No. 61–1, as amended [18 CFR, Chapter I, Part 2, Section 2.56].

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act [18 CFR, Chapter I], public hearings shall be held upon dates to be fixed by notices from the Secretary concerning the lawfulness of the several proposed changed rates and charges contained in the above-designated supplements.

(B) Pending hearings and decisions thereon, the above-designated rate supplements are hereby suspended and the use thereof deferred until the date indicated in the above "Date Suspended Until" column, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitioins to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the Rules of Practice and Procedure [18 CFR 1.8 and 1.37(f)] on or before March 18, 1963.

Commissioner O'Connor *dissenting*, filed a separate statement appended hereto.

Commissioner Woodward *dissenting*, joins in and adopts the statement of Commissioner O'Connor.

O'Connor, *Commissioner*, dissenting:

These matters involve rate increase filings by several producing companies pursuant to their contracts with the pipelines to which they sell. In December 1960 the Commission determined in the Second Amendment of the Commission's Statement of General Policy No. 61–1 that the area ceiling for increased rates in these areas would be 14.6 cents, provided that indefinite price escalation provisions were eliminated from the contracts and that fixed price escalations would be limited to one cent per Mcf at five year intervals beginning no earlier than February 5, 1963. These producing companies amended their contracts to conform with this Policy Statement, and their increased rate filings at or below the ceiling price were approved by the Commission. They are now filing for a one-half cent increase to which they are entitled under their amended contracts, which are in conformity with the Policy Statement.

The question before the Commission is whether to suspend these increases and, if so, for what period. The Commission approved the 14.6 price on condition that such contracts be limited in further price increases as noted. However, it did not give advance approval of the further price increases but specifically stated that it was reserving judgment thereon. Therefore, I do not believe that the increases proposed in these cases can be automatically effectuated on the

grounds that the justness and reasonableness thereof was established in prior determinations.

Thus, the increases should be suspended and placed in effect subject to refund pending a determination of justness and reasonableness. The question before the Commission is whether to suspend the increases for the full five-month period and then permit them to go into effect subject to refund, or to suspend merely for one day. Both methods protect the consumer by guaranteeing a full refund with interest of any amounts collected in excess of a just and reasonable price. Under the latter, the producer can begin immediately to collect the increased price subject to refund. Under the former, the producer is permanently deprived of the revenues from this increase for a five-month period even though the entire increase may later be determined to be just and reasonable.

The primary purpose of the five-month suspension period is to postpone the effectiveness of legally questionable rate increases for a short period of time in which the Commission can resolve the question. While this permanently deprives the producer of five months' revenues to which he may prove he is entitled in the subsequent hearing, it does so for the valid purpose of immediately resolving the question. The producer loses revenues for five months, but by means of an early determination he avoids the continuing uncertainty on his books of an increasing potential refund obligation. In this case, however, there is no suggestion that the proposed increase will be set down for immediate hearing and resolved within the five-month period. Thus the primary rationalization for five months' suspension is unavailable.

Our power to suspend increases for five months also permits the Commission to postpone an increase merely for the sake of postponement where no immediate resolution of the issue is possible. I believe five months' suspension in such a case can only be justified where the proposed increase is not merely questionable but is *prima facie unreasonable*, and thereby provides an independent reason for the permanent five-month deprivation of revenues.

The increases here are within the bounds of those contractual provisions envisioned by our amended policy statement. While that statement did not prejudge the reasonableness of future increases, it did anticipate a zone of reasonableness by specifying not only the timing but also the amount of increases which were tolerable. I would conclude, therefore, that these proposed increases are not prima facie unreasonable but are within the zone of reasonableness outlined by the Commission. For this reason, I believe they should be suspended for one day only and then placed in effect subject to refund pending the ultimate determination of their justness and reasonableness. This course fully protects the consumer and avoids permanent deprivation of revenues from the producer without sufficient cause.

WOODWARD, *Commissioner:* I join in and adopt the dissenting opinion of Commissioner O'Connor filed herein.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

AMERADA PETROLEUM CORPORATION, ET AL., DOCKET NO. CI62-1544, ET AL.

ORDER DENYING MOTION TO IMPOSE PRICE CONDITIONS IN TEMPORARY CERTIFICATES

(Issued February 5, 1963)

On November 29, 1962, the Long Island Lighting Company, Philadelphia Electric Company and The United Gas Improvement Company (Movants) filed a

motion requesting that the Commission vacate the temporary certificates issued to the various party-applicants to the above-entitled proceeding or, in the alternative, impose a condition in each of these temporaries, requiring that the applicant refund to the purchaser, with interest at 7% per annum, any amounts hereafter collected which may be determined to be in excess of the price required by the public convenience and necessity under each applicant's respective certificate docket.

Each of the producers herein except Sun Oil Company in Docket No. CI62–276 have been granted temporary authority to make sales in interstate commerce. In almost every instance the authority was granted without condition as to refund to a price below that at which the sale would be initiated. The initial price would, however, continue to be collected until a prospective price could be determined after hearing upon the applications. Sales of gas were commenced by each of the producers pursuant to and in reliance upon the temporary authority.

Essentially the motion constitutes an application for rehearing of the Commission's Letter Orders issuing temporary authorizations to certain of the producers herein. Section 19(a) of the Natural Gas Act provides that an application for rehearing must be submitted within 30 days following the issuance of an order. The motion herein was not submitted within the statutory 30-day period following the issuance of the temporary authorizations. There is no question that such temporary authorizations constitute appealable orders and, therefore rehearing should be sought within 30 days. However, we recognize that the letter orders issuing the authorizations were unreported, although copies thereof, were available to the public. We shall not, therefore, dismiss the motion as being untimely. However, for the reasons hereinafter set forth, we must deny the motion to terminate the existing temporary authorizations.

Section 7(c) of the Natural Gas Act empowers the Commission to issue temporary certificates when emergency situations exist. We have promulgated regulations recognizing certain situations which constitute emergency situations as to independent producers. See regulations under the Natural Gas Act, Section 157.28.[1] Each of the producers who requested the issuance of temporary authorization to sell gas set forth an emergency situation which, under our regulations, permitted the issuance of such authority. Temporary certificates were therefore issued. Movants would now have us withdraw the existing authority and proffer to each producer a new temporary certificate conditioned to meet the requested requirements, giving each producer the opportunity to reject such temporary authority. Movants ignore the fact that the producers and pipelines here involved have already acted upon the temporary authorizations as issued and have undoubtedly expended considerable funds in justifiable reliance thereon. Apparently Movants have also ignored the dependence of pipelines and their customers upon continued service once a reservoir of natural gas begins flowing into interstate lines. To now offer the producers an opportunity to reject a substituted temporary certificate, conditioned to provide for refunds down to the price to be fixed after the Section 7 hearing we have ordered, would clearly be contrary to the public interest. It would jeopardize the pipeline's existing gas supply from these sources, and place them in a position where, even if they could replace the gas with other supply, their investment in facilities

[1] Also see order denying applications of New York Commission for rehearing and reconsideration and motion for a stay issued December 31, 1962, in *J. Ray McDermott, et al.*, Docket No. CI63–301, *et al.*

here would be lost and new expenditures required without concomitant benefit to the public. It would also leave the producers, all of whom received temporary authorizations only upon a showing of emergency conditions, with no assurance that they could secure new outlets for their gas.

Petitioner's proposal in other words comes down to little more than an argument that we should unilaterally impose a new refund commitment upon the producers. This we will not do. Assuming, without deciding, that we have authority to impose such additional restriction where extraordinary conditions exist that would justify such action, we think this clearly would not be a proper action for us to take here. Since the producers cannot abandon service without our authority and since, as indicated above, it would not be in the public interest to approve any such abandonment request, we would be in a position of having induced producers to dedicate their gas to the market upon one set of conditions, and then imposing more stringent conditions upon them. Such a course of action, except under the most extraordinary conditions, would appear to be inconsistent with the Commission's obligation to act upon applications with "such certainty as to allow the exercise of choice upon [the producers'] part." Sunray *Mid-Continent Oil Company* v. *F.P.C.*, 270 F. 2d 404. Equally important it would so denature the value of a Commission authorization as to place any reliance upon our actions in this area in serious jeopardy.

While this case relates to the imposition of refund conditions in temporary authorizations already issued, we do not wish our determination here to be construed as indicating that we will normally impose such a condition if the applications for temporary authority were before us for the first time. On the contrary, as we made clear in our order in *J. Ray McDermott, supra*, in granting temporary authorizations at our area ceiling prices for producers to sell gas, pending the conclusion of the statutory hearing on the permanent certificate, we have balanced the competing interests of producers and consumers (as well as given full consideration to the needs for certainty of the natural gas companies and the public generally) by providing that while the temporarily certificated price is not subject to refund, the price during this interim period cannot exceed our ceiling price and the producers may not file for any higher price authorized by their contract pending issuance of the permanent certificate. Our policy in this respect was clearly set forth in the Fourth Amendment to our Statement of General Policy No. 61–1 in which we reduced the Southern Louisiana ceiling and observed that the Commission's interim ceilings represent the Commission's judgment of a ceiling which "will enable the Commission to hold the line on new sales in the area at a level consistent with the public interest and, at the same time, to enable producers to obtain authorizations which provide them a reasonable basis for proceeding with their operations and furnishing needed supplies of gas."

In view of these circumstances we find it would be contrary to the public interest, as well as inequitable, to condition the temporary certificates issued to the above-mentioned producers as requested by Movants.

The Commission orders:

The request made by the Long Island Lighting Company, Philadelphia Electric Company and the United Gas Improvement Company either to have the temporary certificates issued to the party applicants to the above-styled proceedings vacated or, in the alternative for the imposition of a condition in each of these temporaries be and hereby is denied.

Commissioners Morgan and Ross *concurring*, filed separate statements appended hereto.

MORGAN, *Commissioner*, concurring:

I concur only in the result.

Unfortunately, past indiscretions committed by this Commission in the matter of granting temporary certificates do not permit us now, in good grace, summarily to grant relief sought by the consuming public.

I therefore limit myself to the hope that proceedings on the merits of this matter will soon be concluded; and that the rates in question will be adjusted, where necessary, to correspond to the "lowest possible reasonable rate" required by the Act.[1]

I do not concur with the reasoning of the majority statement. It appears to be based on what the majority hopes it would find if a hearing were held on the subject motion. Specifically, we should not allow an institutional guilt complex regarding the improprieties that have attended past issuance and use of Section 7 temporary certificates to warp our present understanding of the true legal character of that device.[2]

The concurring statement of Commissioner Ross fully reflects my views in this matter.

ROSS, *Commissioner*, concurring:

I concur with the action of my colleagues in denying the instant motion. This separate statement is necessitated by the failure of the majority to take this occasion to remind industry of the true nature and legal character of temporaries in view of the abuses which have occurred in this area.

Since the earliest days of producer regulation, temporary authorizations permitting the interstate sale of gas have been granted in emergency situations in which expeditious action was required. This practice rapidly expanded to situations where the "emergency" was not particularly acute. Once granted by the Commission and accepted by the producer, the terms of the temporaries were rarely—if ever modified. Temporary authorization quickly became the mode of producer regulation under Section 7 of the Natural Gas Act, and this situation persists today.[3]

Producers began to view the temporary authorizations as the final word regarding the terms under which their sales would be made, and the Commission took no direct action which could be construed as being inconsistent with this belief. The oppositions to the instant motion, for example, mirror the producers' attitude that a temporary authorization, once accepted, represents virtually an unchallengeable and immutable right to sell gas under the terms of the temporary.

In view of this history, I do not consider it desirable to amend the authorizations here in question. However, I can find no justification for reinforcing the fictitious claim that a temporary somehow acquires an aspect of permanence—a notion which is legally unsound, and one which involves the possibility that excessive prices will receive continued sanction resulting in unjust enrichment to the producers.

Temporary authorizations are supposedly granted in emergency situations in order to avoid the delay involved in a detailed inquiry. They are granted summarily, without notice of hearing. As such, they represent a concession to producers to the possible detriment of their purchasers. While an application

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[1] *Atlantic Refining Co.* v. *Public Service Commission*, 360 U.S. 378 at 388 (1959).

[2] See our previous understanding on this point as set forth at page 110 of Opinion No. 351, issued January 22, 1962, 27 FPC 96.

[3] In my partial dissent in *Tenneco Oil Co.*, Docket No. CI63–334, *et al.*, I noted that of 2880 temporary certificates granted in the last two years, only 31 had been superseded by permanent certificates.

for rehearing may be filed (the producers even would have us reject this), this hardly measures up to our traditional concept of justice, which assumes that interested parties will have a right to state their positions before—not after—decision is made.[2] It is crystal clear to me, as it was to this Commission twelve months ago, that temporary authorizations are subject to change on the same basis as that on which they are granted. In the remanded CATCO case, this Commission held:

> Under Section 7(c) the Commission may issue a temporary certificate in case of emergency pending the determination of an application for certificate. This appears to contemplate a continuous course of adjustment until the time that a final order determines that conditions under which a permanent certificate shall be issued. [*Continental Oil Company, et al.*, Docket No. G–11024, *et al.*, Opinion No. 351, 27 FPC 96 at p. 110]

I can find no justification for joining the majority in its purported retreat on this point. Rather than retreat, the instant motion presents an excellent opportunity for us to emphasize the essentially transient nature of temporaries, consistent with our holding in *CATCO*, *supra*.

The necessity for firmly adopting such a policy is manifest. Only five months ago, we found the in-line price in Texas Railroad District No. 4 to be 15¢, at least as of September 28, 1960.[3] It is difficult to conceive that the in-line price with respect to the contracts here involved has escalated since that time to 18¢, an increase of 20 percent. Yet the majority closes its eyes to this significant determination, and not only denies the relief requested, but goes further and voices its determination to perpetuate the conditions under which excessively high prices will be charges again and again without providing for recoupment down to the proper level. Fearing that its action might be misconstrued, the majority, in what is clearly dicta on page 220, indicates that it will not normally impose refund conditions in initial temporary authorizations at the ceiling price levels.

In my opinion, there is no rational basis for such a position. For one thing, it is obvious that all of the reasons cited in the majority's order for refusing to impose the requested refund conditions are clearly inapplicable to situations in which we would be considering an initial application for temporary authorization. The majority's apparent rationale for this position is found in its statement that it balances the competing interests of industry and the consumer by limiting temporary authorizations to prices established in the Statement of General Policy, and by providing for no rate increases during the term of temporary authorization. However, the prospect of limiting producer prices to the applicable ceiling is small consolation to the consumer when he is convinced—and with justification—that several of the ceilings are unjustifiably high.

In summary, I am compelled to voice my disagreement with the majority's apparent insistence to regulate producer prices. in the important interim period pending the establishment of just and reasonable rates, by means of temporary authorizations, and on as summary a basis as possible. In my opinion, initial prices of producers should be governed by permanent certificates. To the extent

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[2] An essential element of due process is an opportunity to be heard before the reaching of a judgment. Judgment without an opportunity to be heard is judicial oppression. *WJR, The Goodwill Station, Inc.* v. *F.C.C.* 174 F. 2d 226, 233 (1948) citing the principal found in *Dartmouth College* v. *Woodward*, 4 Wheat. 518, 581 (Webster's argument) (1819), and in *Gaplin* v. *Page* 18 Wall. 350, 368 (1873).

[3] *Skelly Oil Co.*, Docket No. G–18638, *et al.*, Opinion No. 362, 28 FPC 401 (issued August 30, 1962).

that temporaries are granted, they should be subject to change on an *ex parte* basis, particularly when it is evident that the price is either too high or too low.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

AREA RATE PROCEEDING, ET AL., DOCKET NO. AR61-2, ET AL.; AMERADA PETROLEUM CORPORATION, DOCKET NO. CI60-688; UNION TEXAS PETROLEUM—DIVISION OF ALLIED CHEMICAL CORPORATION, DOCKET NO. CI61-1411; THE BRITISH-AMERICAN OIL PRODUCING COMPANY, DOCKET NO. G-18963; FOREST OIL CORPORATION, DOCKET NO. CI61-248; GENERAL AMERICAN OIL COMPANY OF TEXAS, DOCKET NO. CI61-182; HASSIE HUNT TRUST, DOCKET NO. G-18897; C. H. LYONS, SR., DOCKET NO. CI60-329; OCEAN DRILLING & EXPLORATION CO., DOCKET NO. CI60-743; PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. G-16946; PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. G-19223; PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. CI61-355; PERRY R. BASS (FORMERLY RICHARDSON & BASS), DOCKET NO. CI61-714; REUBEN W. MAYRONNE, JR., D/B/A RIVERSIDE OIL COMPANY, DOCKET NO. G-20182; J. C. TRAHAN DRILLING CONTRACTORS (FORMERLY SHALLOW OIL COMPANY, INC.), DOCKET NO. CI60-698; SOUTHWEST GAS PRODUCING COMPANY, INC., DOCKET NO. G-20046; TRICE PRODUCTION COMPANY, DOCKET NO. CI60-17; TEXACO INC. (FORMERLY THE TXL OIL CORPORATION), DOCKET NO. CI61-969; UNION OIL COMPANY OF CALIFORNIA, DOCKET NO. CI61-331; UNION PRODUCING COMPANY, DOCKET NO. CI61-1111; U.S. OIL OF LOUISIANA, INC., DOCKET NO. CI61-144; ATLANTIC REFINING COMPANY, DOCKET NO. CI61-450; PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. CI61-808; HARVEY PELTIER, DOCKET NO. CI60-505; SOCONY MOBIL OIL COMPANY, INC., DOCKET NO. G-18461

ORDER DENYING MOTION TO IMPOSE PRICE CONDITIONS IN TEMPORARY CERTIFICATES

(Issued February 5, 1963)

On December 12, 1962, Public Service Electric and Gas Company, Long Island Lighting Company and United Gas Improvement Company (Movants) filed a motion to impose price conditions in temporary certificates heretofore issued to the independent producers in the above listed dockets.[1] Responses to the motion were filed by Transcontinental Gas Pipe Line Corporation (Transco) and 15 independent producers.

The producers listed above have each been granted temporary authority to make sales to Transco. In each instance the authority was granted without condition as to refund to a price below that at which the sales would be initiated.

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[1] The matters listed above which were previously consolidated with the Area Rate Proceeding, Docket No. AR61-2 were severed therefrom by order of the Commission issued December 31, 1962, in *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.* The above-listed producers were consolidated with that case by that order. The motion herein was directed to the individual dockets, however, and will be treated accordingly, except *Union Texas Petroleum*, Docket No. CI61-1411, which was dismissed and cancelled by Order issued September 14, 1962, and *Amerada Petroleum Corporation*, Docket No. CI60-688, which is the subject of a settlement agreement and was severed from the proceedings in Docket No. G-13221, et al, by Order issued February 1, 1963, p. 204, *supra*.

The initial price would, however, continue to be collected until a prospective price could be determined after hearing upon the applications. The contracts were entered into during the years 1958 through 1960; the temporary authorizations were issued from 1958 through January 12, 1961.

Sales of gas were commenced by each of the producers pursuant to the temporary authority. Movants have requested the Commission to either (1) terminate the existing temporary authorizations and concurrently issue temporary authorizations containing conditions which would make the sales subject to refund at a lower price, or (2) in the alternative, to amend the existing temporary certificates by imposing price conditions in order to provide for appropriate refund from the date of the Commission's order. Movants indicate in addition that "where appropriate, the Commission should provide an opportunity for the applicants to reject the conditioned proffered certificate."

Essentially the motion constitutes an application for rehearing of the Commission's Letter Orders issuing temporary authorization to the above-listed producers. Section 19(a) of the Natural Gas Act provides that an application for rehearing must be submitted within 30 days following the issuance of an order. The motion herein was not submitted within the statutory 30-day period following the issuance of the temporary authorizations. There is no question that such temporary authorizations constitute appealable orders and, therefore, rehearing should be sought within 30 days. However, we recognize that the letter orders issuing the authorizations were unreported, although copies thereof were available to the public. We shall not, therefore, dismiss the motion as being untimely. However, for the reasons hereinafter set forth, we must deny the motion to terminate the existing temporary authorizations.

Section 7(c) of the Natural Gas Act empowers the Commission to issue temporary certificates when emergency situations exist. We have promulgated regulations recognizing certain situations which constitute emergency situations as to independent producers. See Regulations under the Natural Gas Act, Section 157.28.[2] Each of the above-listed producers requested the issuance of temporary authorization to sell gas and set forth an emergency situation which, under our regulations, permitted the issuance of such authority. Temporary certificates were therefore issued. Movants would now have us withdraw the existing authority and proffer to each producer a new temporary certificate conditioned to meet the requested requirements, giving each producer the opportunity to reject such temporary authority. Movants ignore the fact that the producers and pipe line here involved have already acted upon the temporary authority as issued and have undoubtedly expended considerable funds in justifiable reliance thereon and, in the case of the pipe line, Transco, has become dependent upon this source of supply, in part, to meet its market requirements. To now offer the producers an opportunity to reject a substituted temporary certificate, conditioned to provide for refunds down to the price to be fixed after the Section 7 hearing we have ordered, would clearly be contrary to the public interest. It would jeopardize the pipeline's existing gas supply from these sources, and place them in a position where, even if they could replace the gas with other supply, their investment in facilities here would be lost and new expenditures required without concomitant benefit to the public. It would also leave the producers, all of whom received temporary authorizations only upon a showing of emergency conditions, with no assurance that they could secure new outlets for their gas.

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[2] Also see Order denying applications of New York Commission for rehearing and reconsideration and motion for a stay issued December 31, 1962, in *J. Ray McDermott, et al.*, Docket No. CI63-301, *et al.*

Petitioner's proposal in other words comes down to little more than an argument that we should unilaterally impose a new refund commitment upon the producers. This we will not do. Assuming, without deciding, that we have authority to impose such additional restriction where extraordinary conditions exist that would justify such action, we think this clearly would not be a proper action for us to take here. Since the producers cannot abandon service without our authority and since, as indicated above, it would not be in the public interest to approve any such abandonment request, we would be in a position of having induced producers to dedicate their gas to the market upon one set of conditions, and then imposing more stringent conditions upon them. Such a course of action, except under the most extraordinary conditions, would appear to be inconsistent with the Commission's obligation to act upon applications with "such certainty as to allow the exercise of choice upon (the producer's) part". *Sunray Mid-Continent Oil Company* v. *F.P.C.*, 270 F. 2d 404. Equally Important it would so denature the value of a Commission authorization as to place any reliance upon our actions in this area in serious jeopardy.

While this case relates to the imposition of refund conditions in temporary authorizations already issued, we do not wish our determination here to be construed as indicating that we will normally impose such a condition if the applications for temporary authority were before us for the first time. On the contrary, as we made clear in our order in *J. Ray McDermott, supra*, in granting temporary authorizations at our area ceiling prices for producers to sell gas, pending the conclusion of the statutory hearing on the permanent certificate, we have balanced the competing interests of producers and consumers (as well as given full consideration to the needs for certainty of the natural gas companies and the public generally) by providing that while the temporarily certificated price is not subject to refund, the price during this interim period cannot exceed our ceiling price and the producers may not file for any higher price authorized by their contract pending issuance of the permanent certificate. Our policy in this respect was clearly set forth in the Fourth Amendment to our Statement of General Policy No. 61-1 in which we reduced the Southern Louisiana ceiling and observed that the Commission's interim ceilings represent the Commission's judgment of a ceiling which "will enable the Commission to hold the line on new sales in the area at a level consistent with the public interest and, at the same time, to enable producers to obtain authorizations which provide them a reasonable basis for proceeding with their operations and furnishing needed supplies of gas."

We recognize that at the time the motion was made it appeared that considerable time would lapse before the applications herein would be heard and disposed of. However, since that time, we have consolidated for hearing the above-listed cases as well as most of the other certificate applications now pending for the sale of gas in Southern Louisiana.[4] We anticipate that a final disposition in that proceeding will be forthcoming in the not too far-distant future. A decision therein would dispose of the above-listed applications.

The Commission orders:

The Motion of Public Service Electric and Gas Company, Long Island Lighting Company and the United Gas Improvement Company to impose price conditions in temporary certificates is hereby denied.

Commissioners Morgan and Ross *concurring* for the reasons set forth in their respective concurring statements appended to the order issued February 5, 1963, in Docket No. CI62-1544, *et al.*, *Amerada Petroleum Corporation, et al.*, p. 218, *supra*, to the extent applicable to this order.

[4] *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*, *supra*, footnote 1.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP62-219

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 5, 1963)

On March 19, 1962, as supplemented on May 7, 1962, May 28, 1962, and August 21, 1962, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP62-219 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of pipeline and compression facilities to enable Applicant to attach new supplies of natural gas, all as more fully set forth in the application as supplemented.

Applicant seeks authorization for the construction and operation of the following facilities:

(1) Approximately 160 miles of 24-inch, 14-inch, and 8-inch gas transmission line BT-9 and the necessary lateral lines from BT-9 to central field points, together with associated metering and regulating facilities;

(2) Approximately 29.5 miles of 16-inch loop line parallel to existing pipelines LM-2 and BT-1 from a point near Perla, Arkansas, westward;

(3) One 1,500 horsepower compressor installation (Parish Compressor Station) located on Line BT-9 near its junction with Line BT-1 near Paris, Arkansas; and

(4) One 4,000 horsepower compressor installation (Danville Compressor Station) located near Danville, Arkansas, on Line BT-1.

Applicant seeks authorization for the operation in interstate commerce of the following existing facilities:

(1) That part of Applicant's Line BT-1 and its associated market laterals and related facilities, extending southerly from the point of connection with proposed Line BT-9 approximately 76 miles to Jones Mill, Arkansas;

(2) Applicant's 12-inch Line LM-2 and related facilities extending from a point near Jones Mill, Arkansas, approximately 9 miles to Applicant's Perla Regulating Station; and

(3) Applicant's 18-inch Line T extending easterly from Applicant's Perla Regulating Station approximately 125 miles to a point near Helena, Arkansas, and its associated market laterals and related facilities, together with the construction and operation of the necessary equipment at the Perla Regulating Station to interconnect Line T with all the other interstate pipeline facilities at this central market dispatching point.

The new facilities are estimated to cost approximately $13,101,300, which will be financed from internally generated funds and short term bank loans. The existing facilities cost approximately $10,417,379.

No new sales or service to new markets are proposed in the subject application. The proposed construction and operation are to enable Applicant to augment its overall gas supply. Related producer certificate applications are pending in Docket Nos. CI62-1184, CI62-1239, CI62-1243, CI62-1251, CI62-1253 and CI62-1316.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 24, 1963, respecting the matters involved in and the issues presented by the application, as supplemented, in this proceeding. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure

be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 26, 1943, in Docket No. G–252 (3 FPC 910).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) The certificate issued hereinafter should be conditioned upon the issuance to and acceptance by the producers of their related certificate authorizations in Docket Nos. CI62–1184, CI62–1239, CI62–1243, CI62–1251, CI62–1253, and CI62–1316.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Arkansas Louisiana Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shal be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues; provided, however, that no construction shall be undertaken or facilities placed in operation as proposed herein until the issuance to and acceptance by the producers of their related certificate authorizations in Docket Nos. CI62–1184, CI62–1239, CI62–1243, CI62–1251, CI62–1253 and CI62–1316.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP63-59

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 5, 1963)

On September 7, 1962, as supplemented on September 18, 1962, Cities Service Gas Company (Applicant) filed in Docket No. CP63-59 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas transportation facilities, to meet the increased natural gas requirements of The Gas Service Company (Gas Service) in the Kansas City area of Kansas and Missouri, all as more fully set forth in the application, as supplemented.

Applicant seeks authorization to loop approximately 15.5 miles of its Ottawa-Sedalia 12-inch pipeline with 20-inch pipeline beginning at the east end of Applicant's present 20-inch pipeline loop in the SE¼, Sec. 23, T16S, R23E, thence easterly paralleling Applicant's 12-inch pipeline a distance of 11 miles to the NW¼, Sec. 15, T16S, R25E, all located in Miami County, Kansas; and beginning at the east end of Applicant's present 20-inch pipeline loop in the SE¼, Sec. 16, T45N, R30W, thence easterly paralleling Applicant's 12-inch pipeline a distance of 4.5 miles to the SW¼, Sec. 8, T45N, R29W, all located in Cass County, Missouri.

Applicant also seeks authorization to construct approximately 23 miles of 20-inch pipeline beginning at its Ottawa-Sedalia 12-inch and 20-inch pipeline in the NE¼, Sec. 15, T45N, R30W, Cass County, Missouri, thence in a northerly direction a distance of 23 miles to a connection with Gas Service's 12-inch and 10-inch distribution pipeline currently serving the East Kansas City, Missouri, area in the SE¼, Sec. 26, T49N, R30W, Jackson County, Missouri.

The proposed construction is required to deliver to Gas Service its peak day requirements for the Kansas City area during the heating season of 1962-63 and thereafter. Applicant cannot deliver to Gas Service the required increased volumes of gas through its present Kansas City area delivery points, and the proposed facilities will establish a new point of delivery to Gas Service near the East Kansas City area, which area is experiencing rapid growth, and through which service to Kansas City could be maintained in the event of a catastrophe at any one of the present delivery points.

Applicant estimates the cost of the proposed facilities to be $2,310,000, which will be financed from treasury cash.

On October 12, 1962, the Commission issued a temporary certificate authorizing the construction and operation of the proposed facilities.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 24, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas

company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (3) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

KENTUCKY WEST VIRGINIA GAS COMPANY, DOCKET NO. CP63–134

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued February 5, 1963)

On November 19, 1962, Kentucky West Virginia Gas Company (Applicant) filed in Docket No. CP63–134 an application pursuant to Section 7(b) of the Natural Gas Act, for authority to abandon its 730 horsepower Paintsville Compressor Station located in Johnson County, Kentucky.

On October 10, 1962, 28 FPC 579, the Commission issued an order authorizing the abandonment of service by the Applicant to Louisville Gas and Electric Company in Docket No. CP62–239.

The facilities described above were constructed and operated to perform the delivery of natural gas to the Louisville Gas and Electric Company, which service has been abandoned.

The estimated salvage value of the facilities is $5,000 and the estimated cost of removal is $3,000 according to the Applicant's statement. The compressor was installed in 1923. It is no longer required to enable Applicant to render service.

Pursuant to due notice, a public hearing was held in Washington, D.C. on January 21, 1963, respecting the matters involved in and the issues presented by the application. No petition to intervene or protest to the granting of the application has been received. Staff Counsel, moved orally at the hearing that the intermediate decision procedure be omitted and the Commission render a decision herein pursuant to Section 1.30(c) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a natural gas company within the meaning of the Natural Gas Act, as stated in the first paragraph of the application.

(2) The sale of natural gas to Louisville Gas and Electric Company by Applicant has been terminated and abandoned and the facilities above-described no longer serve the purpose for which they were constructed, therefore the public convenience and necessity no longer require their operation or preservation.

(3) The estimated salvage value of the subject facilities is $5,000.00 and the estimated cost of salvaging them is $3,000.00.

(4) A request during the public hearing by Staff Counsel for omission of the intermediate decision procedure under Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure was unopposed by any party of record, and not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the said rules.

The Commission orders:

(A) Applicant be and is hereby permitted to abandon the facilities as heretofore described, as more fully described in the application.

(B) Applicant shall advise the Commission as to the date of abandonment of the facilities within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

NATURAL GAS PIPELINE COMPANY OF AMERICA AND LONE STAR GAS COMPANY, DOCKET NO. CP63-87

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 5, 1963)

On October 8, 1962, Natural Gas Pipeline Company of America (Natural) and Lone Star Gas Company (Lone Star) filed a joint application in CP63-87, pursuant to Section 7 of the Natural Gas Act, for authorization by Natural to acquire by purchase from Lone Star, and operate, 265.25 feet of 16-inch pipeline located in Stephens County, Oklahoma, and for Lone Star to abandon such facilities. The line extends from Lone Star's metering facilities to a connection with Natural's 26-inch main line.

Natural was authorized by an order of the Commission on May 18, 1962, in Docket No. CP63–121 to construct and operate an 880 HP booster compressor station in the vicinity of Lone Star's metering station. Further study has revealed that the most feasible location for its booster station would be directly adjacent to Lone Star's metering station and that acquisition of the latter's short 16-inch pipeline would result in a more orderly and efficient operation of all the facilities involved.

Natural will purchase Lone Star's facilities for $1,934 which is the original cost less accrued depreciation. Lone Star will not interfere with or restrict the transportation service of the present use of the segment of its pipeline system by transferring it to Natural.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 23, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Natural and Lone Star are natural gas companies within the meaning of the Natural Gas Act as heretofore found by the Commission in Docket No. G–235 (3 FPC 830) and Docket No. G–442 (4 FPC 565).

(2) The facilities hereinbefore described are being used and will continue to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the acquisition by Natural of these facilities and the operation thereof as integral parts of its pipeline system as well as the abandonment of operations thereof by Lone Star and their disposition are subject of the requirements under the Natural Gas Act.

(3) The acquisition of the 265.25 feet of transmission pipeline from Lone Star by Natural for the purpose of allowing the economical pressurizing of the gas being transported is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

The Commission orders:

(A) A certificate of public convenience and necessity be and is hereby issued authorizing Natural Gas Pipeline Company of America to acquire and operate the facilities hereinbefore mentioned and more fully described in the application for the purposes therein stated and upon the terms and price set forth, subject to the conditions hereinafter stated.

(B) The certificate issue and the rights granted thereunder are conditioned by and upon compliance all applicable regulations and statutory provisions by the Applicants and particularly the terms and conditions set forth in paragraphs (a), (b), (d) and (e) of Section 157.20 of Regulations Under The Natural Gas Act.

(C) The operation of the facilities acquired by Natural from Lone Star shall be continued as altered by installation of the booster compressor station within the time provided for in the Commission's order in Docket No. CP62–121 issued on May 18, 1962.

(D) The Lone Star Gas Company shall notify the Commission in writing of the day of transfer of its operation of the facilities to Natural within ten days thereof.

737–369—64——18

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-7

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 5, 1963)

On July 9, 1962, Northern Natural Gas Company (Applicant) filed in Docket No. CP63-7 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval of the Commission to abandon certain facilities and for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities in Dakota and Washington Counties, Minnesota, for the continued sale of natural gas to Organic Soil Builders, Inc., and the South St. Paul Sewage Disposal Plant, all as more fully set forth in the application.

Because the City of South St. Paul, Minnesota, is expanding its disposal plant in Dakota County so as to make a sludge pond over and across Applicant's existing facilities, Applicant proposes to abandon in place part of its 6-inch branchline serving the Newport-St. Paul Cold Storage Plant in Washington County and all of its 2-inch branchline serving the other two customers in Dakota County. Applicant further proposes to remove and relocate one town border station in Dakota County and to construct and operate approximately 1,600 feet of 3-inch branchline in Dakota County in order to maintain service to the two plants in that county. Applicant also seeks authorization to sell a portion of the 6-inch line and the town border station located on the east side of the Mississippi River in Washington County to Northern States Power Company which company will provide natural gas service to the cold storage company.

The proposed facilities are estimated to cost $12,050, to be financed from funds on hand. The 6-inch line and town border station will be sold to Northern States Power Company for one dollar.

Applicant was issued a temporary certificate to relocate the subject facilities on September 5, 1962.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 22, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities proposed to be abandoned as hereinbefore described, all as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission, and the abandonment of said facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonment by Applicant as hereinbefore described is permitted by the public convenience and necessity, and should be approved as hereinafter ordered.

(4) The facilities proposed to be constructed by Applicant, as hereinbefore described and as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(6) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant, Northern Natural Gas Company, of the facilities hereinbefore described, all as more fully described in the application in this proceeding, be and the same are hereby granted.

(B) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP63-88

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 5, 1963)

On October 8, 1962, Texas Eastern Transmission Corporation (Applicant) filed in Docket No. CP63-88 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of an additional 1,020 Mcf of firm natural gas per day to National Gas and Oil Corporation (National), Newark, Ohio, all as more fully set forth in the application on file with the Commission.

It appears that National requires the additional volumes of natural gas in order to meet its anticipated increased requirements resulting from an increase in residential and commercial customers occasioned by the buildup of a new industry in National's service area.

No new facilities will be required for the proposed service.

The proposed sale will be made pursuant to Applicant's FPC Gas Rate Schedule DCQ–C.

By letter, dated November 20, 1962, Applicant was issued a temporary certificate to render the proposed additional service.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 22, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Texas Eastern Transmission Corporation, a Delaware Corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 10, 1947, in Docket No. G–880 (6 FPC 148).

(2) The additional transportation and sale of natural gas by Applicant hereinbefore described, as more fully described in the application in this proceeding, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such transportation and sale are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The subject additional transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Texas Eastern Transmission Corporation, to transport and sell additional volumes of natural gas to National as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP63-50

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 5, 1963)

On August 30, 1962, as supplemented on November 28, 1962, United Gas Pipe Line Company (Applicant) filed in Docket No. CP63-50 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1963 and the operation of unspecified natural gas facilities to enable Applicant to make new industrial sales of natural gas from its main pipeline system, all as more fully set forth in the application, as supplemented.

The purpose of this "budget-type" application is to enable Applicant to act with reasonable dispatch in establishing new delivery points without the delay incident to the filing and processing of individual certificate applications for each new delivery point.

None of the facilities for which Applicant seeks authorization herein will be used to deliver gas to any electric power company for use as boiler fuel in the generation of electricity.

The total cost of the proposed facilities will not exceed a maximum of $750,000, and no single project will exceed a cost of $200,000, all to be financed from current working funds.

Annual deliveries to direct industrial customers through the subject facilities will not exceed a maximum of 10,000,000 Mcf, and said facilities will not increase the main line delivery capacity of Applicant's system.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 22, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are proposed to be used in the transportation and delivery of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The proposed construction and operation of facilities to enable Applicant to make new industrial sales from its main pipeline system are required by

the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization hereinafter granted, a statement showing by project: (a) a description of the facilities installed, (b) the location of said facilities, (c) names of customers served through said facilities, (d) actual final costs, and (e) estimates of annual and peak day deliveries to and estimates of sales to and revenues from each customer.

(7) The facilities hereinafter authorized should not be used to deliver gas to any electric power company for use as boiler fuel in the generation of electricity, to deliver an annual volume of gas in excess of 10,000,000 Mcf, or to increase the main line delivery capacity of Applicant's system.

(8) The authorization hereinafter granted should be limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $750,000, with no single project to exceed a cost of $200,000.

(9) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing United Gas Pipe Line Company to construct during the calendar year 1963 the proposed facilities hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, to establish delivery points for new industrial sales from Applicant's main pipeline system, and to operate such facilities and deliver natural gas for said industrial sales.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit within 60 days after the expiration of the authorization herein granted a statement showing by project: (a) a description of the facilities installed, (b) the location of said facilities, (c) names of customers served through said facilities, (d) actual final costs, and (e) estimates of annual and peak day deliveries to and estimates of sales to and revenues from each customer.

(D) The facilities herein authorized shall not be used to deliver natural gas to any electric power company for use as boiler fuel in the generation of electricity, to deliver an annual volume of gas in excess of 10,000,000 Mcf, or to increase the main line delivery capacity of Applicant's system.

(E) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1963, and the total expenditures for

facilities to be constructed thereunder are hereby limited to a maximum of $750,000, with no single project to exceed a cost of $200,000.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP63-132

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued February 5, 1963)

On November 15, 1962, United Gas Pipe Line Company (Applicant) filed in Docket No. CP63-132 an application pursuant to Section 7(b) of the Natural Gas Act for authority to abandon and remove a duel orifice meter and regulator station and appurtenant facilities located in the B.B.B. & C.R.R. Survey Abstract 95, Jefferson County, Texas.

The Applicant states that the facilities above described are used to serve natural gas to the Williams Plant of Koppers Company, Inc.; and that the sale has been terminated by the purchaser pursuant to the terms of the contract of sale which expires on January 1, 1963, thus rendering the facilities idle and of no use as a matter of public convenience and necessity.

Applicant proposes to dismantle and remove the said facilities after service to Koppers Company, Inc., has ended and to use them elsewhere.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 28, 1963 respecting the matters involved in and the issues presented by the application. No petition to intervene or protest to granting the application has been received. Staff Counsel, moved orally at the hearing that the intermediate decision procedure be omitted and the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a natural gas company within the meaning of the Natural Gas Act and the facilities above described are a segment of the interstate pipeline system and subject to the jurisdiction of the Commission.

(2) The use of the said facilities as a part of the Applicant's pipeline system was terminated on January 1, 1963 when the delivery of gas through them was discontinued. Therefore the public convenience and necessity does not require the continued maintenance or operation thereof.

(3) The removal of these facilities from the site of their present installation will not affect the public convenience and necessity.

(4) A request made during the public hearing by Staff Counsel for the omission of the intermediate decision procedure under Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure was unopposed by any party of record, and not having been denied by the Commission is granted pursuant to Section 1.30(c)(1) of the said rules.

The Commission orders:

(A) Applicant be and is hereby permitted to abandon, dismantle and remove the facilities heretofore described, as more fully described in the application.

(B) Applicant shall advise the Commission of the date of removal of the facilities within 10 days thereafter.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

COLUMBIA RIVER BASIN, HEADWATER BENEFIT INVESTIGATION, DOCKET NO. E-6384

FINDINGS AND ORDER

(Issued February 6, 1963)

Past Proceedings:

Pursuant to the Commission's order issued June 28, 1950 (Docket No. E-6404), headwater benefit investigations were carried out with respect to projects in the Columbia River basin, which resulted in an order issued by the Commission on February 25, 1952, 11 FPC 832, to the effect that none of the licensees under consideration had been directly benefited by headwater improvements of another licensee, a permittee, or of the United States, during the period from 1931 through December 31, 1948.

Subsequently, in compliance with an order issued February 4, 1952, 11 FPC 768, which was supplemented on December 5, 1952, and again on January 16, 1956, 15 FPC 1024, the staff of the Commission undertook further headwater benefit investigations of the Columbia basin under Docket No. E-6384. As a result, the Commission issued interim determinations on December 27, 1956, 16 FPC 1388, December 31, 1957, 18 FPC 835 and December 11, 1958, 20 FPC 807 in which Puget Sound Power & Light Company and Public Utility District No. 1 of Chelan County, Washington, were ordered to make payments to the United States, The Montana Power Company, and The Washington Water Power Company for headwater benefits received by the Rock Island project (Project No. 943). The period covered by the three determinations extends from 1949 through 1955.

Additional work in Docket No. E-6384 was undertaken in accordance with the supplemental order of January 16, 1956, and resulted in a proposed report by the Commission's staff in which payments for headwater benefits received during the years 1949-1956, inclusive, were recommended. Comments on this proposed report were made by the non-Federal parties, and on May 15, 1961, they submitted an alternative proposal for determining payments. Comments on the proposed report and the alternative proposal were made by the Department of the Army on July 10, 1961, and by the Department of the Interior on March 15, 1962. Interior's comments included a further proposal which was sent to other parties for comments. Such comments were due on August 15, 1962, and have been received by the Commission.

The Present Proceeding:

By letter dated January 2, 1962, Corporate Services, Inc., on behalf of Public Utility District No. 2 of Grant County, Washington, Public Utility District No. 1 of Chelan County, Washington, Public Utility District No. 1 of Pend Oreille County, Washington, The Montana Power Company, and The Washington Water Power Company, requested that the Commission make a determination of payments under Section 10(f) of the Federal Power Act for the period of the Pacific Northwest Coordination Agreement, and for projects subject to the Agreement. A similar request was made by the Department of the Interior in Assistant

Secretary Holum's letter of February 7, 1962. The period of the Pacific Northwest Coordination Agreement for which a determination under Section 10(f) was sought by these parties was for one year, beginning September 1, 1961, and ending August 31, 1962. In reply to the requests mentioned above, the Commission, in letters dated March 1, 1962, informed the parties that it had directed its staff to proceed as expeditiously as possible with the necessary studies and investigations. Accordingly, the Commission's staff made an investigation and issued a report dated July, 1962, recommending payments under Section 10(f) of the Federal Power Act for the aforesaid one-year period.

The Staff Report of July, 1962, was served on all interested parties under date of July 20, 1962. All of the interested non-Federal parties and the Secretary of the Interior filed exceptions to the Staff Report and the non-Federal parties requested a hearing.

By order issued November 2, 1962, the Commission directed that a hearing be held respecting the matters involved and the issues presented by the exceptions to the July 1962 Staff Report in this matter, and that a prehearing conference be held to consider the matters enumerated in Section 1.18(b) of the Commission's Rules of Practice and Procedure. On November 19, 1962, the prehearing conference was held and on November 28, 1962, the Presiding Examiner issued his Specification of Pre-Trial Conference Results Pursuant to Rule 1.18(d), directing the parties to serve prepared direct testimony in support of their positions and setting a hearing on the matters involved and the issues presented for March 25, 1963.

On December 18, 1962, the parties to this proceeding submitted to the Commission the Pacific Northwest Coordination Agreement, 1962–1963, for consideration in connection with proceedings under Section 10(f) of the Federal Power Act.

The parties which have filed exceptions to the Staff Report of July 1962 do not agree to all portions of the recommendations of the Report relative to payments for headwater benefits due the United States, but have offered to consent to the entry of an order by the Commission setting forth the assessments herein specified without the necessity of a public hearing on the issues raised by the exceptions. It is in the public interest that such offer be accepted and that a protracted and expensive public hearing be avoided.

The Commission finds:

(1) Seven headwater reservoir projects are included in the present investigation of headwater benefits under Docket No. E–6384. Three are owned by the United States and four by non-Federal developers operating under licenses issued by the Federal Power Commission. Projects and owners are listed below.

Federal		Non-Federal		
Owner	Project	Owner	Project	FPC project No.
United States (USBR) [1]	Hungry Horse	The Montana Power Co.	Kerr	5
Do	Grand Coulee	The Washington Water Power Co.	Noxon Rapids	2075
United States (USCE) [2]	Albeni Falls	Public Utility District No. 1 of Chelan County.	Chelan	637
		Public Utility District No. 1 of Pend Oreille County.	Sullivan Lake	2225

[1] USBR = Bureau of Reclamation.
[2] USCE = Corps of Engineers.

(2) Each of the above-mentioned reservoir projects except Sullivan Lake includes a hydroelectric plant which is benefited by at-site, and in some instances by upstream, storage. In addition, ten projects, situated downstream from one or more of the six headwater improvements, are affected by the release of water from a reservoir, or reservoirs, lying above them. Head and limited pondage have been developed at these projects for the production of hydroelectric power. Of the ten, four are owned by the United States and six by non-Federal entities. The names of downstream projects and their owners are shown in the tabulation below.

Federal		Non-Federal		
Owner	Project	Owner	Project	FPC Project No.
United States (USCE)	Chief Joseph	The Montana Power Co.	Thompson Falls	1869
Do	McNary	The Washington Water Power Co.	Cabinet Gorge	2058
Do	The Dalles	Public Utility District No. 1 of Pend Oreille County.	Box Canyon	2042
Do	Bonneville	Public Utility District No. 1 of Chelan County.	Rocky Reach	2145
		Do	Rock Island	943
		Public Utility District No. 2 of Grant County.	Priest Rapids	2114

(3) The purpose of the present investigation is to determine what payments should be made to the United States, and to licensees, in accordance with the provisions of Section 10(f) of the Federal Power Act, for headwater benefits received during the period from September 1, 1961, through August 31, 1962, from headwater improvements in the Columbia River basin, and in accordance with the offer of settlement of the parties, to determine such payments for the period from September 1, 1962, through August 31, 1963.

(4) Under the conditions existing during the period from September 1, 1961, through August 31, 1962, the principal function of power storage in the portion of the Columbia River basin under consideration in this proceeding was to increase the low-water flow of the Columbia River and the tributaries involved. The principal measure of the benefits from power storage facilities during such period was the increase in flow which would have been made available from storage releases had the critical dry period recurred. The critical period in this instance is a seven-month period beginning September 16 and ending April 15, during which time it is assumed the natural flows of the critical water-year 1936–1937 are repeated.

(5) The dam and reservoir facilities at a headwater improvement project provide two power functions. The first is a storage function, which is beneficial to the at-site power plant and each power plant downstream. The second is a head function, which is beneficial to the at-site power plant only. Therefore, the annual cost of interest, maintenance, and depreciation, namely 10(f) costs, pertaining to the dam and reservoir of each headwater improvement project, to be borne by power, both at-site and downstream should be apportioned to storage and head functions, and the costs so apportioned to storage in turn apportioned to power plants, at-site and downstream. Under the conditions existing during the period from September 1, 1961, through August 31, 1962, this cost apportionment should be accomplished as follows:

The 10(f) costs to be borne by power are divided in proportion to the energy available from storage releases during the critical period and the energy made available by the head at the storage site during the critical period. Since,

as previously noted, the head function provides only at-site benefits, whereas the storage function provides both at-site and downstream benefits, the cost allocated to the storage function is the cost to be apportioned among the projects, at-site and downstream. This apportionment is made in direct proportion to the energy available at each plant during the critical period from storage at the headwater improvement. The cost attributable to the storage function is determined by the following formula:

$$C_s = C_p \frac{P_s}{P_s + P_h}$$

in which C_s = annual 10(f) power costs of the dam and reservoir apportioned to storage,

C_p = annual 10(f) costs of the dam and reservoir to be borne by power both at-site and downstream,

P_s = critical period energy, at-site and downstream from at-site storage,

P_h = critical period energy, at-site from natural flow and from at-site and upstream storage.

The annual 10(f) costs of each headwater improvement thus apportioned to the storage function are distributed among the power plants, at-site and downstream, in proportion to the energy available at each plant during the critical period from the storage in the reservoir being considered. The annual costs thus apportioned to a downstream non-Federal plant represent the annual payment to be made by the owner of that plant for headwater benefits, provided that such payment does not exceed the value of the benefits received.

(6) The charges computed by the method described in paragraph (5) of these findings to be payable to the United States by owners of non-Federal hydroelectric projects for the period between September 1, 1961 through August 31, 1962, under Section 10(f) of the Federal Power Act are as follows:

The Montana Power Co	$195,600
The Washington Water Power Co	263,600
Public Utility District No. 1 of Pend Oreille County	58,400
Public Utility District No. 1 of Chelan County	534,000
Public Utility District No. 2 of Grant County	302,900
Total	1,354,500

(7) All factors relevant to a determination under Section 10(f) of the Federal Power Act of the amounts to be assessed against the owners of the non-Federal hydroelectric projects and paid to the United States for the period from September 1, 1962, through August 31, 1963, under the conditions imposed by the Pacific Northwest Coordination Agreement, 1962–1963, are identical with those of the period from September 1, 1961 through August 31, 1962.

(8) The charges assessed in this proceeding for benefits conferred by headwater improvements are equitable, based upon all of the facts and circumstances existing during the periods, September 1, 1961 through August 31, 1962, and September 1, 1962 through August 31, 1963, and the amounts of such charges have been agreed to by all parties hereto.

(9) The owners of non-Federal hydroelectric projects have agreed to make payments as between one another during the period September 1, 1961 through August 31, 1962, which include the following payments in settlement of all liabilities under Section 10(f) of the Federal Power Act:

The Washington Water Power Company to the Montana Power Company:

Noxon Rapids to Kerr	$36,100
Cabinet Gorge to Kerr	23,400
Total	59,500

Public Utility District No. 1 of Pend Oreille County to the Montana Power Company:

Box Canyon to Kerr	$9,000

Public Utility District No. 1 of Pend Oreille County to the Washington Water Power Company:

Box Canyon to Noxon Rapids	$4,200

Public Utility District No. 1 of Chelan County to the Montana Power Company:

Rocky Reach to Kerr	$22,600
Rock Island to Kerr	10,400
Total	33,000

Public Utility District No. 1 of Chelan County to the Washington Water Power Company:

Rocky Reach to Noxon Rapids	$10,600
Rock Island to Noxon Rapids	5,100
Total	15,700

Public Utility District No. 2 of Grant County to the Montana Power Company:

Priest Rapids to Kerr	$19,900

Public Utility District No. 2 of Grant County to the Washington Water Power Company:

Priest Rapids to Noxon Rapids	$9,300

Public Utility District No. 2 of Grant County to Public Utility District No. 1 of Chelan County:

Priest Rapids to Chelan	$16,300

(10) The owners of non-Federal hydroelectric projects have agreed to make payments as between one another during the period September 1, 1962 through August 31, 1963, which are identical to the payments set forth in the preceding paragraph, except that The Washington Water Power Company has agreed to pay Public Utility District No. 1 of Pend Oreille County the sum of $2,300 which the District has agreed to accept in full settlement of all obligations of owners of all downstream non-Federal hydroelectric projects under Section 10(f) of the Federal Power Act. Such payment is in consideration of the partial replacement during the period September 1, 1962 through August 31, 1963, of Noxon Rapids storage by Sullivan Lake storage required by physical limitations on the drawdown on Noxon Rapids. During the period September 1, 1961 through August 31, 1962 the benefits conferred by storage in Sullivan Lake on non-Federal downstream plants were not guaranteed or otherwise provided for under the coordination agreement. Accordingly, such benefits, if any, are not determined in this proceeding.

(11) The joint offer of settlement of the parties constitutes a reasonable voluntary agreement as between non-Federal parties under Section 13.1 of the Regulations under The Federal Power Act and should be approved.

(12) Section 10(f) of The Federal Power Act requires that the owners of projects benefiting from headwater improvements shall pay to the United States the cost of making headwater benefits determinations as fixed by the Commission. Salaries and other expenses incurred by the staff in connection with this investi-

gation are estimated to be $2,900. On the basis of respective payments and receipts this cost would be divided among the several parties as follows:

The Montana Power Co	$400
The Washington Water Power Co	750
Public Utility District No. 1 of Pend Oreille County	150
Public Utility District No. 1 of Chelan County	1,000
Public Utility District No. 2 of Grant County	600
Total	2,900

The Commission orders:

(A) The payments to be made to the United States by the owners of the non-Federal Hydroelectric projects for the period September 1, 1961 through August 31, 1962 are assessed under Section 10(f) of the Federal Power Act as follows:

The Montana Power Co	$195,600
The Washington Water Power Co	263,600
Public Utility District No. 1 of Pend Oreille County	58,400
Public Utility District No. 1 of Chelan County	534,000
Public Utility District No. 2 of Grant County	302,900
Total	1,354,500

(B) The payments to be made to the United States by the owners of the non-Federal hydroelectric projects for the period September 1, 1962 through August 31, 1963 are assessed under Section 10(f) of the Federal Power Act as follows:

The Montana Power Co	$195,600
The Washington Water Power Co	263,600
Public Utility District No. 1 of Pend Oreille County	58,400
Public Utility District No. 1 of Chelan County	534,000
Public Utility District No. 2 of Grant County	302,900
Total	1,354,500

(C) The payments agreed upon between the owners of the non-Federal hydroelectric projects as set forth in Findings (9) and (10) are hereby approved as a settlement among the non-Federal parties, in lieu of Section 10(f) determinations, pursuant to Section 13.1 of the Regulations under the Federal Power Act for the periods September 1, 1961 through August 31, 1962, and September 1, 1962, through August 31, 1963.

(D) The several parties shall pay to the Federal Power Commission, to defray the cost of making this determination, the sum of $2,900, to be divided as follows:

The Montana Power Co	$400
The Washington Water Power Co	750
Public Utility District No. 1 of Pend Oreille County	150
Public Utility District No. 1 of Chelan County	1,000
Public Utility District No. 2 of Grant County	600
Total	2,900

(E) The payments specified in paragraphs (A) and (D) shall be paid within sixty days from the date of issuance of this order.

(F) The payments specified in paragraph (B) shall be paid on or before October 1, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP62-14; THE MANUFACTURERS LIGHT & HEAT COMPANY, DOCKET NO. CP61-155

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBIC CONVENIENCE AND NECESSITY

(Issued February 6, 1963)

This matter is before us upon a motion made upon the record on January 8, 1963, by Tenessee Gas Transmission Company (Tennessee) for disposition of the application at Docket No. CP62-14 as a noncontested proceeding and for omission of the intermediate decision procedure. All parties concurred in such motion.

On July 19, 1961, Tennessee, a Delaware corporation with its principal place of business in Houston, Texas, filed an application at Docket No. CP62-14, pursuant to Section 7 of the Natural Gas Act, for a temporary and permanent certificate of public convenience and necessity, authorizing Tennessee to transfer to Manufacturers Light and Heat Company (Manufacturers), for the account of United Fuel Gas Company (United Fuel),[1] under Tennessee's Rate Schedule CD-4 in Tennessee's Northern Rate Zone, deliveries of 35,000 Mcf[2] of natural gas per day, which was a part of the contracted volumes of gas Tennessee was then delivering on a long-term basis under its Rate Schedule CD-3 to United Fuel in Tennessee's Eastern Rate Zone. Such transfer was proposed for each six-month period, November 1 through April 30, for a term of years coextensive with that of the gas sales contract between Tennessee and United Fuel, dated May 4, 1959.[3] Tennessee alleged that, because of the way its system is designed and operated, it could make the transfer of deliveries during the six winter months without construction of any additional facilities, but could not do so during the remainder of the year.

By its application filed at Docket No. CP61-155 on November 25, 1960, as supplemented on February 20, April 10, and July 21, 1961, Manufacturers sought certificate authority to construct and operate 4,000 additional horsepower compressor units at its existing Adaline Compressor Station in Marshall County, West Virginia, and approximately 10.47 miles of 24-inch pipeline in several sections, replacing corresponding sections of 16-inch pipeline, on Manufacturers' Line No. 65 in the western part of Allegheny, and adjoining portions of Washington and Beaver Counties, Pennsylvania, all at an estimated cost of $2,387,000. These facilities were for the purpose of receiving Manufacturers' increased 1961-1962 gas requirements into its system from United Fuel.

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[1] United Fuel and Manufacturers are affiliated corporations, both being 100%-owned subsidiaries of the Columbia Gas System, a holding company.

[2] All volumes herein are stated at a pressure base of 14.73 psia unless otherwise noted.

[3] Tennessee was previously authorized to sell and deliver to United Fuel a contract demand of 544,680 Mcf of natural gas per day under a contract dated May 4, 1959, which continues until November 1, 1979, and thereafter until terminated by either Seller or Buyer upon 12 months prior written notice. 76,500 Mcf of this daily quantity is delivered to United Fuel in Tennessee's Central Rate Zone and 468,180 Mcf is delivered in Tennessee's Eastern Rate Zone. Tennessee has been previously authorized to deliver to Manufacturers, in Tennessee's Northern Rate Zone, a contract demand of 30,600 Mcf of natural gas per day under a contract dated January 28, 1959. Tennessee has also previously been authorized to transport for Manufacturers up to 113,371 Mcf of natural gas per day which Manufacturers purchases from producers in Texas. Of this amount, 36,871 Mcf per day is delivered in Tennessee's Eastern Rate Zone and the balance, 76,500 Mcf, is delivered in Tennessee's Northern Rate Zone.

In the July 21, 1961, amendment to its application in Docket No. CP61–155, Manufacturers stated that, due to estimated increases in peak day requirements for the 1961–1962 winter, of 47,500 Mcf over those contained in its original application, it would be necessary for Manufacturers not only to construct those facilities for which certificate authority was originally sought but that, without the transfer of deliveries by Tennessee as proposed in CP62–14, it would also be necessary for it to construct twenty miles of 20-inch pipeline loop on its Line No. 1740, north of Glenville, West Virginia, at an estimated cost of $1,900,000.[4] Manufacturers further indicated that the transfer of deliveries as proposed by Tennessee in Docket No. CP62–14 would obviate construction of this additional 20 miles of pipeline loop.

By letter dated August 18, 1961, the Commission granted Tennessee temporary authorization to make the proposed transfer of deliveries to Manufacturers, commencing November 1, 1961, as requested in Docket No. CP62–14.

By Notice issued November 8, 1961, the Commission scheduled a hearing for December 18, 1961, in Docket Nos. CP61–155 and CP62–14.

At the hearing held on December 18, 1961, all parties present, and the Commission Staff, agreed that permanent certificates of public convenience and necessity should be issued to Tennessee and Manufacturers as applied for and that a condition should be attached thereto requiring Manufacturers to reimburse United Fuel for the net additional cost of purchasing said 35,000 Mcf of natural gas per day at Tennessee's Northern Zone rate over that of purchasing such volume at Tennessee's Eastern Zone rate.[5] It was further stipulated that the reimbursement arrangement should be filed with the Commission by United as a part of its Volume No. 2 FPC Gas Tariff. It was agreed that such hearing should recess to January 15, 1962, in order to allow Staff Counsel opportunity to prepare and serve upon the parties proposed findings and conclusions which would serve as the stipulation of all parties.

By its Findings and Order Issuing Certificates of Public Convenience and Necessity, issued February 20, 1962, 27 FPC 384, the Commission authorized construction and operation of the facilities applied for by Manufacturers in Docket No. CP61–155 (this did not include the pipeline loop described in the July 21, 1961, amendment to the application at Docket No. CP61–155, which the transfer of deliveries in Docket No. CP62–14 would render unnecessary). The Commission further authorized Tennessee to transfer deliveries of 35,000 Mcf of natural gas per day as proposed in Docket No. CP62–14, for two winter periods ending April 30, 1963. The Commission, however, stated that it had two questions concerning this arrangement: (1) Whether or not the reimbursement of United Fuel by Manufacturers would result in Manufacturers paying United Fuel for a service

[4] In the original application, Manufacturers had estimated its 1961–62 increase in peak day requirements to be 32,200 Mcf per day. It proposed to meet these from its Victory Storage Field. The facilities for which authorization was sought were claimed by Manufacturers to be necessary for injections of gas into this storage field. In its July 21, 1961, amendment to the application, Manufacturers estimated its increased 1961–1962 market requirements to be 79,500 Mcf and proposed to meet this increase by the transfer of 35,000 Mcf per day proposed by Tennessee and the balance from the Victory Storage Field.

[5] The applicants had not proposed that Manufacturers reimburse United for this additional cost. It developed at the hearing that this was the only feature of the applications which was objected to by any party. The intervenors purchasing gas from United contended that, since the proposed transfer was solely for the benefit of Manufacturers, Manufacturers, not United, should bear such increased cost. It was shown that United could deliver all of Manufacturers' increased 1961–1962 peak day requirements without installation of any additional facilities and that, thus, only Manufacturers would receive any benefit from the proposed transfer.

which United Fuel will not render; and (2) whether the reimbursement arrangement between United Fuel and Manufacturers could properly be contained in a Volume No. 2 tariff filing by United Fuel. The Commission remanded the proceeding to the Examiner to determine whether or not the proposed transfer of deliveries should be continued on a long-term basis.

On March 22, 1962, Tennessee filed a motion for reconsideration of the Commission's February 20, 1962, order or, in the alternative, for the Commission to define the issues to be tried in the remanded proceeding more specifically. On May 1, 1962, 27 FPC 900, the Commission issued its order specifying the issues to be developed at the hearing upon the remanded proceeding which it set to convene upon June 4, 1962.[6]

On May 31, 1962, pursuant to motion filed by Manufacturers and United on May 24, 1962, the Examiner extended the date for reconvening of the formal hearing to July 25, 1962, and provided that a prehearing conference be held on June 4, 1962, in lieu of the formal hearing previously scheduled for such date.

On June 5, 1962, the Examiner issued an order providing that all parties supporting the application should serve their direct testimony and exhibits by June 26, 1962; that Staff and all parties opposing the application should state their respective positions and serve their answering testimony and exhibits by July 16, 1962; and, that further pretrial conference for the purpose of either settling or joining the issues be held on July 25, 1962. Thereafter, upon motions and requests made at various times by either Tennessee, Manufacturers, or United, and not opposed by any party, the above dates were finally extended to November 1, November 29 and December 5, 1962, respectively, by Examiner's notices issued June 28, July 26, September 4, and October 10, 1962. In each instance, the extension was granted because it appeared that the same might result in a settlement of the issues involved in the proceeding.

On November 1, 1962, Manufacturers served upon all parties the prepared testimony, and four related exhibits[7] of Mr. H. R. Weitzel, Vice President and Chief Engineer of Manufacturers and other companies of the "Pittsburgh Group" of Columbia Gas System Companies. On the same date United Fuel served the prepared testimony of Mr. John P. Cornell, Vice President (Rates and

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[6] This order states, in pertinent part that:

> The Commission in its order of February 20, 1962, said that it appeared to the Commission that there was a serious question as to whether the granting of the applications would not place Manufacturers in the position of making payments to United for a service which United did not render. . . .
>
> . . . However, for the purpose of clarification of the issues, the Commission will indicate in the ordering paragraph herein the issues to be tried at the hearing to determine the propriety of the charge to be made by United (to Manufacturers).
>
> *The Commission orders:*
>
> The above-docketed proceedings be and the same are hereby set for further hearing . . . and the issues to be developed upon such hearing shall include the following: (1) Does United in fact render a service for which it should be reimbursed? (2) If United renders a service, is the proposed basis of reimbursement just and reasonable? (3) Does the arrangement properly fall within the scope of a Volume No. 2 tariff filing, or is it in conflict with Section 154.52 of the Commission's Regulations? (4) Does the arrangement improve the reliability of service and offer additional flexibility in operating techniques to the integrated Columbia System? (5) Does the arrangement represent an accommodation to the Columbia System, resulting in benefiting the System as a whole, rather than primarily benefiting Manufacturers?

[7] Exh. #1—System Map of Manufacturers; Exh. #2—Flow Diagram of portion of Manufacturers' System for 1963–64 winter without continuation of transfer; Exh. #3—same, with continuation of transfer; and Exh. #4—annual cost of service for 23.88 miles of 26-inch loop of Manufacturers' main line north of the Glenville connection with United Fuel (Line #1740).

Depreciation Departments) of United Fuel and the other "Charleston Group" companies of the Columbia Gas System.

No other exhibits were filed by any party.

At the prehearing conference held on December 5, 1962, Staff Counsel stated that the Commission's Staff had examined the prepared testimony and exhibits served by Manufacturers and United Fuel and, after consideration of such evidence and the evidence previously in the record, desired to make an alternative proposal which, he believed, would settle all issues in the proceedings.

Staff Counsel proposed that Tennessee render a transportation service to Manufacturers of 35,000 Mcf per day (34,314 Mcf @ 15.025 psia), for the months of November through April of each year, from Tennessee's connections with United Fuel in its Eastern Rate Zone to Tennessee's connection with Manufacturers near Unionville, Pennsylvania, in its Northern Rate Zone. Under Staff's proposal, Tennessee would bill Manufacturers directly for the transportation service at a rate equal to the difference between the rates contained in Tennessee's T–3 and T–4 Rate Schedules.[8] Tennessee would file, as a special Volume 2 filing, the contract between Tennessee and Manufacturers, providing for this service. Manufacturers would be billed by United Fuel under its CDS–1 Rate Schedule for the gas to be transported for Manufacturers by Tennessee and United Fuel would continue to purchase the 468,180 Mcf of contract demand gas presently under contract with Tennessee in Tennessee's Eastern rate zone.

Staff Counsel further pointed out that, upon the basis of the settlement agreement for all of Tennessee's presently outstanding rate proceedings, Staff's proposal will result in a cost to Manufacturers of $20,650 per year less than would be incurred for transfer of 35,000 Mcf per day of United's contract quantity to Manufacturers under Tennessee's CD Rate Schedules.

All parties present, except United Fuel and Manufacturers, agreed to accept the Staff's alternate proposal as the basis for settling all issues in this proceeding and agreement to disposition of the matter under the most expeditious means possible. The prehearing conference was recessed to December 17, 1962, at which time it was to reconvene for the purpose, if possible, of agreeing upon the mechanics to effectuate Staff's proposal and the procedural steps which would constitute the most expeditious means of disposing of the proceeding.[9]

At the prehearing conference on January 8, 1963, all parties present stipulated and agreed that the prepared testimony and exhibits of H. R. Weitzel and John P. Cornell, served upon the parties on November 1, 1962, would be received into evidence by stipulation of the parties and that the presence of such witnesses would be unnecessary. This evidence is now part of the record in these proceedings. All parties waived cross-examination of witnesses Weitzel and Cornell.

All parties concurred in the motion of Tennessee's counsel to amend the application in Docket No. CP62–14 to conform to the Staff proposal of December 5,

[8] Under the settlement agreement relating to all of Tennessee's outstanding rate proceedings, recently approved by the Commission in Docket No. G–11980, *et al.*, the difference between Tennessee's T–3 and T–4 rates—the rates to be charged for the transportation service—will be 38¢ per Mcf of billing demand per month plus 2.1¢ per Mcf of commodity at 15.025 psia. Although not a part of Staff's proposal, Tennessee and Manufacturers propose that the agreement to be submitted to the Commission contain a provision for a 66⅔ minimum take-or-pay-for commodity charge.

[9] By letter dated December 14, 1962, counsel for Tennessee, on behalf of Tennessee, Manufacturers, and United Fuel, requested and was granted an extension to January 8, 1963, for reconvening of the prehearing conference. He advised the Examiner that Manufacturers and United Fuel had advised him that they were willing to accept Staff's proposal and that the three companies felt that, by taking time to negotiate the contract for the transportation service contemplated by Staff's proposal, prior to reconvening of the prehearing conference, the proceeding could be concluded at such prehearing conference.

1962. All parties likewise concurred in the motion of Tennessee's counsel for omission of the intermediate decision procedure and waived their rights to file briefs and to have oral argument.

All parties stipulated and agreed that Tennessee should be granted a certificate of public convenience and necessity in Docket No. CP62–14 in accordance with the Staff proposal stated on the record December 5, 1962, authorizing Tennessee to transport to Manufacturers, in Tennessee's Northern Rate Zone, 35,000 Mcf of natural gas per day from United Fuel, in Tennessee's Eastern Rate Zone, during each winter period November through April. It was further stipulated and agreed that a condition should be inserted in the certificate to provide that any certificate issued herein should not become effective until Tennessee shall file with the Commission, as part of its FPC Gas Tariff, Fourth Revised Volume No. 2, an executed contract satisfactory to the Commission which effectuates Staff proposal of December 5, 1962.

The Commission finds:

(1) Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 12, 1947, in Docket G–910, 6 FPC 777.

(2) The proposed transportation and delivery of a specified maximum quantity of 35,000 Mcf of natural gas per day by Tennessee from Tennessee's connections with United Fuel in Tennessee's Eastern Rate Zone to its connection with Manufacturers at Unionville, Pennsylvania, in Tennessee's Northern Rate Zone, in accordance with the Staff proposal set forth on the record December 5, 1962, as recited above, is required by the public convenience and necessity and a certificate therefor should be issued.

(3) Tennessee is able and willing to do the acts and perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) Public convenience and necessity require that the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.20) should attach to the certificate hereinafter issued, and to the exercise of the rights granted thereunder.

(5) Public convenience and necessity requires that the certificate hereinafter issued be conditioned to become effective upon the filing by Tennessee, as a part of its FPC Gas Tariff, Fourth Revised Volume No. 2, of a contract between Tennessee and Manufacturers satisfactory to the Commission.

(6) Tennessee having requested the omission of the intermediate decision procedure, with all parties concurring therein, and all the requirements of Section 1.30(c)(1) (18 CFR 1.30(c)(1)) of the Commission's Rules of Practice and Procedure having been satisfied, sufficient cause exists for the Commission forthwith to render its final decision in the instant proceeding.

The Commission orders:

(A) The motion by Tennessee to omit the intermediate decision in these proceedings should be and hereby is granted for the reasons set forth above.

(B) A certificate of public convenience and necessity be and the same is hereby issued to Tennessee Gas Transmission Company, authorizing it to transport for and deliver to the Manufacturers Light and Heat Company at Tennessee's Unionville delivery point, in Tennessee's Northern Rate Zone a specified maximum quantity of 35,000 Mcf (@ 14.73 psia) of natural gas per day from United Fuel Gas Company, in Tennessee's Eastern Rate Zone, during

each period November 1 through April 30 for the term set forth in the transportation contract to be filed for Commission approval.

(C) The general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act shall attach to the issuance of the certificate issued in paragraph (B) hereof.

(D) The certificate herein issued in paragraph (B) shall become effective upon the filing by Tennessee Gas Transmission Company, as a part of its FPC Gas Tariff, Fourth Revised Volume No. 2, of a contract between Tennessee and Manufacturers satisfactory to the Commission, which will incorporate Staff's proposal of December 5, 1962, set forth above.

OPINION NO. 378

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NOS. G–12446 AND G–12447; CONTINENTAL OIL COMPANY, DOCKET NO. G–12432

OPINION AND ORDER ON APPLICATION FOR CERTIFICATE; DETERMINING JURISDICTION, DEFERRING DECISION AND REQUIRING FURTHER FILINGS

(Issued February 6, 1963)*

Syllabus

1. Commission jurisdiction extends to sale of gas whether technically in form of leasehold transactions or otherwise. P. 253.
2. Commission *rejects* argument that jurisdictional issue has been settled; *states* it is one of the critical public convenience and necessity issues available for reconsideration as result of Court remand. P. 253.
3. Contention that order reopening proceedings failed to specify jurisdictional issue is *rejected*. P. 253.
4. Transfer of gas by producers to pipeline for resale in interstate market is jurisdictional; fact that it was sold in bulk rather than Mcf basis does not change nature of sale. P. 254.
5. Distinguishing *Panhandle* case, Commission *holds* it has jurisdiction over in-place sale of Rayne Field gas to Texas Eastern. P. 255.
6. *Concluding* instant sale is jurisdictional Commission *notes* any other result would: (1) exalt form over substance, (2) give greater weight to technicalities of draftsmanship than achievement of purposes of the Act, and (3) impair its ability to control price received for gas sold to pipelines in interstate commerce. P. 255–256.
7. Control limited to approving costs of gas to pipeline is not effective way to regulate producer prices because, in large, pipeline must be allowed to pass its purchased gas cost to ultimate consumer. P. 256.
8. While all gas purchases on bulk basis are not nesessarily contrary to public interest, Commission objects here to the attempt to disguise transaction which in effect is sale of gas, by casting it in form of a sale of leases with provisions making it difficult, if not impossible to subject price thereof to regulatory control. P. 257.
9. Upon remand, Commission *determines* jurisdiction; *defers* decision on application for certificate of public convenience and necessity under Section 7, of the Natural Gas Act, and *requires* further filings by pipeline and its suppliers. P. 258.

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*Initial decision appears on P. 259. Order granting rehearing issued April 2, 1963, 29 FPC 692. Modified and affirmed; reconsideration denied, by Opinion No. 378–A and Order issued July 12, 1963, 30 FPC 153. Reversed and remanded, *M. H. Marr* v. *F.P.C.*, 336 F. 2d 320 (CA5–1964). Petition for *certiorari* filed, November 3, 1964.

Commissioner O'Connor *concurring.*

Commisisoner Woodward *not participating.*

Jack D. Head, W. D. Deakins, Jr., Keith M. Pyburn, Joseph F. Weiler and *Martin L. Friedman* for Texas Eastern Transmission Corporation.

Edwin F. Russell and *Harry G. Hill, Jr.*, for the Brooklyn Union Gas Company.

Barabara M. Suchow, Kent H. Brown and *Charles J. Cox* for New York Public Service Commission.

Sidney M. Schreiber for New Jersey Natural Gas Co.

J. David Mann, Jr., John E. Holtzinger, Jr., and *J. Frederick Moring* for the United Gas Improvement Co.

David K. Kadane, E. M. Barrett and *Bernard Hulkower* for Long Island Lighting Co.

Alan R. Squires and *Hubert E. Squires* for Pennsylvania Public Utility Commission.

Frederick H. Clark, Brooks E. Smith, William C. Hart and *R. A. Rosan* for the Ohio Fuel Gas Company and the Manufacturers Light and Heat Company.

J. Harry Mulhern, Edward S. Kirby, Fred M. Broadfoot, James R. Lacey and *William R. Duff* for Public Service Electric and Gas Company.

George P. Lewnes for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SWIDLER, *Chairman:* These proceedings relate to the supply of gas from the Rayne Field in Louisiana to Texas Eastern Transmission Corporation and arose from applications filed by Texas Eastern and Continental Oil Company for certificates of public convenience and necessity under Section 7 of the Natural Gas Act. The proceedings are before us after remand of a prior order by the Court of Appeals,[1] further hearings, a decision of the presiding examiner issued June 29, 1962, and exceptions by several of the parties. The case was argued orally on November 29, 1962.

The proceedings are the subject of an involved history. Texas Eastern, which is a natural-gas company owning and operating an interstate natural gas transmission system extending from Texas to the Philadelphia-Newark area, executed gas purchase contracts on February 1, 1957, with Continental, M. H. Marr, Sun Oil Company and General Crude Oil Company to purchase their natural gas production in the Rayne Field in Acadia Parish, at an initial price of 23.9 cents per Mcf including state taxes of 1.3 cents per Mcf. On April 22, 1957, Texas Eastern filed its application seeking a certificate authorizing it to construct and operate a 2200 horsepower compressor station and 22 miles of 14-inch pipeline to transport natural gas from the Rayne Field to Opelousas, Louisiana, where the gas was to be delivered into its pipeline system. At about the same time certificate applications were filed by Continental and the other producers. After a hearing the examiner issued a decision granting unconditioned certificates of public convenience and necessity, and exceptions were filed.

Before the Commission had acted on the exceptions the Court of Appeals in *P.S.C.* v. *F.P.C.*, 257 F. 2d 717 (CA3) [2] reversed an order of the Commission granting unconditioned certificates for sales of natural gas from off-shore Louisiana at 22.4 cents per Mcf on the ground that the price had not been justified. Thereafter the producers in the present proceeding requested withdrawal of

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[1] *P.S.C. of N.Y.* v. *F.P.C.*, 287 F. 2d 143 (CADC).

[2] Affirmed as *Atlantic Refining Co.* v. *P.S.C.*, 360 U.S. 378, the *CATCO* case.

their applications for sales at a somewhat higher initial rate and Texas Eastern filed a petition to reopen the hearing and to amend its application to reflect a change in its plan for acquiring the Rayne Field gas.

Under the new plan the facilities to be built by Texas Eastern would be essentially the same as under the previous plan and the same volumes of gas would be flowing into its system. The difference is solely in the contractual arrangements. Texas Eastern would acquire the lease-hold interests in the reserves which the producers had formerly committed to the gas purchase contracts with Texas Eastern. To carry out the plan the four Rayne Field producers, Continental, Sun, Marr and General Crude entered into a contract designated "Lease Sale Agreement" dated December 4, 1958, with Louisiana Gas Corporation, an affiliate of Texas Eastern. Since by a simultaneous contract Texas Eastern was to have the right to acquire the title to the leases from Louisiana Gas, we shall refer to Texas Eastern as the real party in interest. Under the Lease Sale Agreement, and attached assignment Texas Eastern was to make an initial cash payment of $12,420,500 and a payment of 16 annual promissory notes amounting to $121,975,200, altogether totalling $134,395,700. On their part the four producers would convey to Texas Eastern all gas rights, wells and related equipment down to the base of what is called the Nodosaria A Sand.[3] The producers would reserve their interest in oil and other minerals and a production payment covering all the liquids to be extracted from the gas. The Agreement is subject to certain conditions precedent including a tax ruling in favor of the producers that the sale of the leasehold interests would be considered a long-term capital gain and the issuance of a certificate of public convenience and necessity to Texas Eastern that would enable it to take and transport the gas.

While there is controversy in the briefs in the present stage of the proceeding over the extent of the Rayne Field reserves, they are known to be of substantial size. Texas Eastern estimates production to be 924,678 Mmcf in the years 1961 through 1989. Based on total recoverable reserves of 990,000 Mmcf Texas Eastern acquired approximately 79 percent under the original leasehold acquisition transaction in 1958. Since that time Texas Eastern has acquired the interests of minority leaseholders bringing its total percentage interest in the Rayne Field reserves up to approximately 81.5 percent. As to the remaining gas, mostly royalty gas, Texas Eastern pays for it on the basis of 22.6 cents per Mcf including the Louisiana severance tax of 2.3 cents per Mcf.

Texas Eastern's request for reopening the proceeding to take into account its lease purchase plan was granted, and on June 23, 1959, the Commission in Opinion No. 322, 21 FPC 860, issued an unconditioned certificate to Texas Eastern for its proposed facilities. In its opinion the Commission discussed the lease sale arrangement, and held that the record in the case amply supported the conclusion that the elements of public convenience and necessity were satisfied by Texas Eastern's project without examining the cost to Texas Eastern of the Rayne Field leases. It noted "Texas Eastern has not filed an application for a certificate authorizing the acquisition of the Rayne Field leases and we have no authority to issue such a certificate" (21 FPC at p. 864).

In its decision of December 8, 1960, the reviewing court[4] noted that the language and tenor of the Commission's opinion appeared to confer general approval upon the terms of the acquisition arrangement and to this extent was unsupported by substantial evidence. The court thought it of "no importance here that the transactions by which Texas Eastern proposes to acquire the gas

[3] The base is at 13,650 to 13,890 feet.

[4] *P.S.C.* v. *F.P.C.*, 287 F. 2d 143 (CADC).

will themselves be, by virtue of a change in form, beyond the regulatory control of the Commission." The court indicated that the Commission could regulate the purchaser regardless of the status of the seller and added:

> Two courses are open to the Commission. It may, by clarification of the order presently under review, expressly disclaim any approval of the price to be paid for natural gas by the applicant. See *Kansas Pipe Line and Gas Co., et al., supra*, note 4. Or it may reopen the record in the certificate proceeding to permit Texas Eastern to establish by adequate evidence that the acquisition costs which it proposes to incur will be consistent with the public convenience and necessity.

As a result of the remand the Commission issued an order on July 14, 1961, 26 FPC 167, in which it found that the first course enumerated by the court would leave unsettled matters of public importance and would provide inadequate protection to the public. It thereupon reopened the proceedings for the purpose of determining:

> (1) Whether the public convenience and necessity require that the certificate issued in these proceedings by our order of June 23, 1959, and set aside by the Court of Appeals, be reissued in whole or in part; and also whether the cost of the Rayne Field gas was out of line, whether the proposal was in the public interest even if the cost was out of line, and whether Texas Eastern should cease operating the Rayne Field facilities or exclude them from its costs.

Hearings were held in October, November and December of 1961, and the examiner issued his decision June 29, 1962. The examiner was of the opinion that the Commission was without jurisdiction over the Rayne Field lease and leasehold acquisition and the natural gas thereunder until the gas was connected to an interstate pipeline or was dedicated to interstate commerce, but that the Commission could regulate the purchaser of the gas, Texas Eastern, and determine at what price the public convenience and necessity required dedication. After considering the evidence he concluded that it was virtually impossible to determine the future costs to Texas Eastern for the Rayne Field service since they were predicated upon assumptions and estimates. He therefore turned to a consideration of the in-line price as of April 22, 1957, when, he said, the gas was dedicated to the interstate market. He found that the initial price allowed to Texas Eastern for the Rayne Field gas in interstate commerce should be conditioned at 18.5 cents per Mcf, exclusive of taxes, at 15.025 psia, and issued a certificate to Texas Eastern so conditioned. He also required that the company keep separate accounts for the Rayne Field costs, so that the costs of this gas could be identified in any future rate proceedings.

Exceptions to the decision were filed by Texas Eastern, the United Gas Improvement Company (UGI), Philadelphia Electric Company and our staff.

The issues which emerge from the record in this proceeding, are whether we have jurisdiction over the lease sale arrangement, whether the arrangement is required by the public convenience and necessity, and what is the appropriate disposition to be made at this stage in the proceedings.

JURISDICTION

In determining whether to grant a certificate to Texas Eastern the cost of its gas supply is of obvious importance. If at the time we are considering a pipeline's application for a certificate we have before us the applications of producers to sell gas to the pipeline we can, of course, consider the producers' proposed initial price and can condition their certificates appropriately. In the present case Texas Eastern contends, and the examiner agrees, that we do not have jurisdiction over the acquisition of the gas supply because what was to be a sale of gas has been converted into a sale of leases, and we are left, it is said,

only with the jurisdiction to disallow a portion of Texas Eastern's cost of its gas supply. We do not agree that there is such a gap in our jurisdiction under the Natural Gas Act. As will be developed below, our jurisdiction, under the circumstances of this case, extends to the sale of gas to Texas Eastern whether technically in the form of leasehold transaction or otherwise.

Before going into the question of jurisdiction we may note that Texas Eastern argues that this question has been settled and is not before us. Texas Eastern disagrees with the conclusion of the staff and the interveners that the Commission is free to re-examine the jurisdictional question related to the so-called Rayne Field lease acquisition. On our part we agree with the conclusions of the interveners and the staff.

In our previous opinion the Commission merely noted without discussion that we had no authority to issue a certificate for the acquisition of the leases (21 FPC at p. 864). The court, again without discussion, noted that the "Commission has been held to lack jurisdiction over gas leases" citing *F.P.C.* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498. It is apparent the issue was hardly considered in the earlier phase of this proceeding; in our opinion, it may be considered at this stage if for no other reason than that the issue was given by passing mention by the Commission and the Court. In *N.L.R.B.* v. *Baltimore Transit Co.*, 140 F. 2d 51, 55 (CA4), *certiorari* denied 321 U.S. 795; it was said that "An administrative agency, charged with the protection of the public interest, is certainly not precluded from taking appropriate action to that end because of mistaken action on its part in the past."

In *F.C.C.* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, an order of the Federal Communications Commission denying an application for a radio station license was reversed because the Commission had misunderstood state law. Upon remand the F.C.C. set argument on the application with two rival applications that had been filed and heard subsequently. Upon the objection of Pottsville and review of this procedural issue the Supreme Court held that when the Court of Appeals had laid bare the error with respect to state law, the Commission was not limited to correcting this error but "was again charged with the duty of judging the application in the light of 'public convenience, interest or necessity'" (309 U.S. at p. 145). One of the critical public convenience and necessity issues which became available for reconsideration by this Commission when its earlier decision was reversed and remanded for "further proceedings not inconsistent" with the Court of Appeals opinion, was the underlying question of its jurisdiction over the lease acquisition.

Texas Eastern also contends that apart from what we could have done on remand, we failed to specify the jurisdictional issue in reopening the proceeding. In our order of July 14, 1961 (26 FPC 167), we reopened the record to permit Texas Eastern, in the words of the Court of Appeals, "to establish by adequate evidence that the acquisition costs which it proposes to incur will be consistent with the public convenience and necessity". We then added:

> It is also necessary and reasonable that we define, *but not necessarily limit*, the issues and prescribe procedures, as hereinatfer ordered, so as to guide the course of the reopened proceeding. [Italics added.]

We thereupon listed some of these issues including the issue, as quoted earlier in this opinion, "Whether the public convenience and necessity require that the certificate—be reissued in whole or in part." By the wording of this order we were not necessarily providing for a further hearing with respect to all issues. The issue of our jurisdiction is fundamental and could not be waived,[5] but in any event the jurisdictional issue is comprehended in the

[5] Compare *United States* v. *Corrick*, 298 U.S. 435, 440; *Mitchell* v. *Maurer*, 293 U.S. 237, 244.

issue whether the public convenience and necessity require that the certificate be reissued. The jurisdiction issue was raised and briefed before the examiner, and was briefed and argued before the Commission.

In considering the question of the Commission's jurisdiction over the in-place sale of the Rayne Field gas to Texas Eastern, it must be kept in mind that the original sales contract between the producers and Texas Eastern was clearly subject to FPC jurisdiction and not subject to state regulation. The changes made in the terms of the agreement would not appear to confer state jurisdiction over this interstate transaction. In such a situation, the Supreme Court has stated that it is "not inclined to approach the problem negatively, thus raising the possibility that a 'no man's land' will be created. Compare *Guss* v. *Utah Labor Board*, 353 U.S. 1 * * *. That is to say, in a borderline case where congressional authority is not explicit we must ask whether state authority can practicably regulate a given area and if we find that it cannot, then we are impelled to decide that federal authority governs."[6] Congress "meant to enact a comprehensive and effective regulatory scheme",[7] . . . "to protect consumers against exploitation at the hands of natural gas companies."[8]

We have jurisdiction over this transaction because by it the producers transferred natural gas to Texas Eastern for resale by Texas Eastern in the interstate market. The fact that the gas, which had been developed to an extent where reasonable estimates could be made as to the available reserves, was sold in bulk rather than on a per Mcf basis does not change the nature of the sale. Although in form a lease transfer, we agree with the staff that we should look beyond the label of the transaction to its essence.[9] The contract provides for a downpayment and 16 annual promissory notes in return for the transfer of leasehold rights plus equipment, but the effect resembles the ordinary sale of gas because of the following features among others:

(1) Only gas in particular strata is conveyed; and the producers retain their interest in oil and other minerals;

(2) In effect the transaction is for the sale of stripped gas inasmuch as the producers are to receive a production payment from Texas Eastern from the sale of natural gas liquids;

(3) While the payment for the leases is represented by notes and spread over a 16-year period, the notes have an acceleration clause by which payment is accelerated if production is increased, so that Texas Eastern's payments would be geared to production;

(4) By a management agreement dated July 27, 1959, Continental agrees to operate the field, including drilling wells and managing all wells and equipment, and to deliver to Texas Eastern specified minimum daily quantities of gas; Texas Eastern will reimburse Continental for its expenses in operating the field but the assignment of the leases shows that the costs of operating the leases will be defrayed out of the production payments to which Continental is entitled;

(5) It is Louisiana Gas, not Texas Eastern which is liable on the notes to the producers, so that the true purchaser of the gas is not bound by the principal obligation of the lease sale transaction.

In opposition to the claim of jurisdiction Texas Eastern cites *F.P.C.* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, which is also cited by the

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[6] *Transcontinental Gas Pipe Line Corp.* v. *F.P.C.*, 365 U.S. 1, 19–20.

[7] *Panhandle Eastern Pipe Line Company* v. *F.P.C.*, 332 U.S. 507, 520.

[8] *Sunray Mid-Continent Oil Company* v. *F.P.C.*, 364 U.S. 137, 147.

[9] Of course, we are not concerned with the transfer of other property rights, if they are involved. Nor are we concerned with the operation of the producing properties, wells or the equipment for producing and gathering natural gas.

Court of Appeals in the present proceeding. In that case Panhandle transferred substantial gas leases to a subsidiary, Hugoton Production Company, which was to sell the gas in intrastate commerce, and subsequently spun off the Hugoton stock to the Panhandle stockholders. The Court held that the Commission did not have jurisdiction over the transaction and denied it an injunction to prevent the transfer. Quoting from Section 1(b) of the Act which excludes from our jurisdiction "the production or gathering of natural gas" the Court concluded that "leases are an essential part of production" (337 U.S. at p. 505), that Congress "excluded the Commission from exercising any direct control or regulation over the actual production and gathering of natural gas," (337 U.S. at p. 507) and that "the transfer of undeveloped gas leases" was "an activity related to the production and gathering of natural gas and beyond the coverage of the Act" (337 U.S. at 515).

We think that the present case is distinguishable from that involved in the *Panhandle* case. In that case the leases were undeveloped so that the transfer did not resemble a sale of gas as did the sale of developed leaseholds here. Furthermore, the reserves here are connected or are to be connected to an interstate pipeline and are to be sold in interstate commerce while those in *Panhandle* were transferred to a corporation which subsequently sold them in intrastate commerce. Also, in the *Panhandle* case the gas reserves passed entirely out of the control of the seller while here the seller retained rights to oil, gas if found other than in particular strata, production payments for liquids, and management of the field.

Apart from these distinctions, which we think controlling in themselves, the *Panhandle* case was decided in 1949, five years before the Supreme Court held in the *Phillips* case [10] that sales of natural gas by producers in interstate commerce were subject to our jurisdiction. In the *Phillips* case the Court found that sales from producers to pipelines occurred after production and gathering as those terms are used in Section 1(b) of the Act had been completed. However, the Court did not rest its decision on this narrow ground but said that it was the "congressional intent to give the Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company." The instant transaction obviously falls within this category aside from any question as to the applicability of *Panhandle* to the transfer of gas leases to intrastate purchasers.

The *Phillips* case has been followed in numerous cases, including *Saturn Oil & Gas Co.* v. *F.P.C.*, 250 F. 2d 61, 68 (CA10), *certiorari* denied 355 U.S. 956, and *Continental Oil Co.* v. *F.P.C.* 266 F. 2d 208, 210 (CA5), *certiorari* denied, 361 U.S. 827, which are of particular interest here. In the *Saturn* case the sales were made at the wellhead. The Court considered that they were made after production but prior to gathering and interpreted the *Phillips* case to hold "that the production or gathering exemption of section 1(b) did not apply to exclude from the jurisdiction of the Commission sales by any producer of natural gas for transportation interstate for resale to the public." In the *Continental* case the sale was made at the top of two valves in the "Christmas Tree" at the wellhead. The Court concluded that "production" was complete before the point of sale, but it is obvious that "gathering" had not been completed.

Thus we conclude that a sale of gas in interstate commerce during the course of production and gathering is subject to our jurisdiction. Likewise, the sale of gas (or reserves) made under the circumstances here involved by the producers

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[10] *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672. It may be noted that the court in *City of Detroit* v. *F.P.C.*, 230 F. 2d 810 (CADC), *certiorari* denied 352 U.S. 829, pointed out the influence of the *Phillips* case on the procurement of gas supplies.

to Texas Eastern for transportation in its pipeline is a sale of gas for resale in interstate commerce and is subject to our jurisdiction. Any other result would exalt form over substance, would give greater weight to the technicalities of contract draftsmanship than to the achievement of the purposes of the Natural Gas Act, and would impair our ability to control the price received for gas sold to the pipelines in interstate commerce to the detriment of the ultimate consumer. Control limited to approving the costs of the gas to the purchasing pipeline is, of course, not an effective way to regulate producer prices because in the large a pipeline must be allowed to pass on its purchased gas costs to the ultimate consumer or it cannot continue to discharge its public service responsibilities.

THE LEASE SALE

In view of our findings that the in-place sale of the Rayne Field gas reserves to Texas Eastern is subject to our jurisdiction, it is obvious that the proceeding is not in a posture for final disposition at this time. It will now be necessary for the producers to file an application for a certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act to obtain Commission approval of the sale of this gas.

It is clear from the record of this case that it is not in the public interest for this Commission to certificate a transaction such as the one presented to us on this record. Having asserted our jurisdiction, the price that the producers will receive under the proposed lease sale arrangements must be subject to the Commission's authority to fix just and reasonable rates. However, the terms of the instant arrangements which contemplate that Texas Eastern would pay the producers a sum of money in cash and then make payments on promissory notes over a 16-year period certainly did not envision adjustments from time to time to comply with FPC rate regulation and it is indeed difficult to envision how we could exercise our regulatory authority within the framework of such an arrangement.

Another consideration which is of importance in determining the type of arrangements for sales by producers to pipelines is the fact that the Commission is now implementing the area approach to producer regulation. Sales under the arrangements herein contemplated could not readily be adjusted to our determination of just and reasonable rates in an area rate proceeding and they would thus escape effective rate regulation.

The record in this proceeding clearly demonstrates the difficulty of attempting to determine a proper price for this gas under the present arrangements. Evidence on average costs per Mcf was presented by Texas Eastern on various assumptions ranging from a low of 18.79 cents per Mcf to 24.34 cents per Mcf at 15.025 psia. These costs include operating expense; depreciation, depletion and amortization; return; and royalties. Texas Eastern, however, objected to the inclusion of certain items such as royalty payments and severance taxes and the staff argued that, because of a number of considerations, including the use of an untested reservoir and an improper estimate of porosity and connate water, the amount of the reserves transferred was exaggerated, so that the cost per Mcf was actually higher. Thus, in order to determine the cost, lengthy hearings would be required and careful consideration would have to be given to factors that should not be involved in a certificate proceeding. Even then the per Mcf price of the gas could not be determined with any reasonable degree of accuracy at this time because many of these factors are based on estimates and forecasts of varying degrees of reliability.

In view of the deficiencies of the lease sale arrangement we are of the opinion that it would serve no purpose to analyze the cost evidence here presented and the objections made to it and that in the exercise of our jurisdiction over the

transaction we should require the formulation of a different means for Texas Eastern's acquiring gas supplies. This does not mean that we must invariably oppose a pipeline assembling its own reserves from whatever source. We recognize that there are frequently advantages in a pipeline owning and operating its gas reserves, and we do not hold that all gas purchases on a bulk rather than a per Mcf basis are necessarily contrary to the public interest. What is objectionable here is the attempt to disguise a transaction which in effect is a sale of gas by casting it in the form of a sale of leases with provisions that would make it difficult if not impossible to subject to regulatory control the price for the sale to an interstate pipeline of this large body of gas.

DISPOSITION OF THESE PROCEEDINGS

We have before us a complicated procedural situation. As will be recalled, Texas Eastern shifted from a straight purchase of gas to the lease sale arrangement. In our prior decision we did not hold that we had jurisdiction over this transaction but, in effect, accepted it as labeled by the parties in granting a certificate to Texas Eastern. The reviewing court, without discussion, agreed with the Commission on the question of jurisdiction, but held that we should either have disclaimed approval of the price under the lease sale or should have examined the justification for the price. We reopened the proceeding largely to obtain further evidence on whether the lease sale was consistent with the public interest. We now find that we have jurisdiction over the sale, and that the transaction is not in the public interest as a way to acquire gas supplies.

In these circumstances the parties should be given ample opportunity to work out new arrangements in the light of the requirements of the Natural Gas Act and our discussion in this opinion. We shall therefore afford Texas Eastern and its suppliers a period of 6 months to complete such arrangements and make the necessary filings with this Commission. This delay would not be detrimental to the public because Texas Eastern is already taking gas from the Rayne Field.[11]

In making the requirement for filing a new arrangement we are not defining our requirements with precision, for we think that in view of the procedural delays and the contractual arrangements that have been made the parties should have considerable freedom to extricate themselves from this complicated situation. However, consistent with our discussion above the lease sale arrangement should be rescinded and the producers, or one producer acting for all, should file rate schedules for the sale of gas to Texas Eastern and corresponding applications for certificates of public convenience and necessity. Texas Eastern, on its part, should file an amended certificate application referring to its purchase of gas. The new contract, of course, would be effective from the delivery of the first gas from the Rayne Field and would be a substitute for the lease sale arrangement now proposed. We do not think it would be inequitable to require this revision, for the Lease Sale Agreement was specifically made subject to the buyer's obtaining a certificate, PSC in the course of the earlier proceedings had expressed its opposition to the lease arrangement as it was constituted, and the court on review did not affirm our granting of a certificate to Texas Eastern.

The Commission further finds:

(1) Continental, Sun, Marr and General Crude are independent producers of natural gas and natural gas companies within the meaning of the Natural

[11] On November 27, 1957, and December 5, 1958, Texas Eastern was granted temporary certificates for part of its proposed facilities, but its permanent certificate for the lateral for the Rayne Field was granted in Opinion No. 322, 21 FPC 860 (issued June 23, 1959) and in effect nullified by the court.

Gas Act as heretofore found by the Commission or by participation in the Lease Sale Agreement discussed herein.

(2) The Lease Sale Agreement referred to above represents sales of natural gas for resale in interstate commerce, which are subject to our jurisdiction under the Natural Gas Act, and such sales, together with the construction and operation of any facilities necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Continental, Sun, Marr and General Crude have not obtained certificates or filed rate schedules in connection with their sales of natural gas subject to the jurisdiction of the Commission as required by Section 4 and 7 of the Natural Gas Act.

(4) Texas Eastern is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued July 7, 1958 (20 FPC 3).

(5) The construction and operation of facilities by Texas Eastern as hereinbefore described, all as more fully described in the application in these proceedings, will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(6) The construction and operation of facilities subject to the jurisdiction of the Commission as proposed herein by Texas Eastern have not been shown to be required by the public convenience and necessity.

(7) It is appropriate in the administration of the Natural Gas Act that decision on Texas Eastern's application for a certificate of public convenience and necessity be deferred and that further filings be required on the part of Texas Eastern and its suppliers of gas.

The Commission orders:

(A) Decision on Texas Eastern's application for a certificate of public convenience and necessity in the above-entitled proceedings is hereby deferred.

(B) Continental, Sun, Marr and General Crude within six months of the issuance of this order shall make filings of appropriate rate schedules and applications for certificates of public convenience and necessity. Within the same period Texas Eastern shall file a revised application for a certificate to put into effect a new arrangement for the supply of gas to Texas Eastern from the Rayne Field in conformity with this opinion, the public interest and the Natural Gas Act.

(C) Exceptions not granted herein are hereby denied.

Commissioner O'Connor *concurring*, filed a separate statement appended hereto. Commissioner Woodward *not participating*.

O'CONNOR, *Commissioner*, concurring:

While I join in the disposition of this case by the majority, certain differences in reasoning require that I express my position separately.

I agree with the majority for the reasons stated in the Order that the question of our jurisdiction over this sale has not been foreclosed. On that question I conclude, first, that the transaction involves a "sale" of "natural gas" as used in Section 1(b) of the Natural Gas Act. Because of the proved nature of these reserves, we have here, in effect, a sale of a relatively well defined block of gas, as distinguished from the sale of indefinite mineral rights over a given area of land. Being a sale of a defined block of gas, it unavoidably becomes a "sale" of "natural gas" contemplated by the Act. Second, I conclude this transaction is "in interstate commerce" because, and solely because, the necessary effect of

this sale to an interstate pipeline is to place this gas into the stream or pattern of interstate commerce.

I further agree that the case before us must be remanded because in its present form the sale is not susceptible to effective price regulation. The controlling difficulty, I believe, is that the amount of gas being purchased by the pipeline is indefinite, and therefore the ultimate price per Mcf to be charged the consumers cannot be ascertained. Without knowing the Mcf price of this gas, we have no means of determining whether the price paid for it is in the public convenience and necessity. For this reason, I would remand the case for the parties to the transaction to remedy this defect. This can be done by obtaining a guarantee from the producers that the reserves will produce a minimum amount of gas, by obtaining a stipulation from all parties in this case of the minimum reserves, or by producing compelling expert evidence of the minimum figures.

If the transaction is so modified, I believe we will be in a position to effectuate our duties under the Natural Gas Act. It is true that the form of this transaction will still be unusual, and because of this fact it will produce difficulties in techniques of regulation. Particularly, since this transaction contemplates an outright sale of a block of gas for a fixed and certain price, the Commission will have only one occasion to pass on the appropriateness of the price, rather than a continuing jurisdiction to readjust it to changing circumstances. The majority on page 256 of its Order suggests that this difficulty is fatal (although on page 257 it notes that all in-place purchases are not hereby precluded. I thoroughly disagree. There is nothing inherent in a one-shot transaction that precludes effective regulation. All recent regulation of pipeline production has been done on this basis—expenses for outright purchases of undeveloped leaseholds, lands or rights once incurred and approved go into the rate base and are not subjected to continuing adjustments, whether paid for in cash or on an installment basis.

To make this regulatory inconvenience a controlling factor would be to rule out in-place purchases by pipelines since it would eliminate the attraction to producers of receiving a firm price for a completed sale of a defined block of gas. The net effect would be that a pipeline with the staff, facilities, and finances for exploration and development could obtain its own production with all the advantages thereof, but a pipeline not in a position to carry out an exploration program could not obtain its own production by purchasing proven reserves in place. Such a result, I submit, would be violative of the public interest.

INITIAL DECISION

UPON REOPENED PROCEEDINGS UPON REMAND UNDER SECTION 7, NATURAL GAS ACT

(Issued June 20, 1962)

FRAZEE, *Presiding Examiner:* This is a certificate proceeding under Section 7 of the Natural Gas Act.

The historical background of this controversy shows that the Texas Eastern Transmission Corporation (Texas Eastern), a Delaware corporation with its principal place of business in Shreveport, Louisiana, is a natural-gas company owning and operating an interstate natural gas transmission system extending from Texas to the Philadelphia-Newark area.

On February 1, 1957, Texas Eastern executed gas purchase contracts with the Continental Oil Company (Continental), M. H. Marr (Marr), Sun Oil Company (Sun) and General Crude Oil Company (General Crude) to purchase their natural gas production in the Rayne Field, Acadia Parish, Louisiana at an initial price of 23.9¢ per Mcf including state taxes of 1.3¢ per Mcf.

On April 22, 1957, Texas Eastern filed an application[1] with the Federal Power Commission seeking a certificate of public convenience and necessity authorizing it to construct and operate a 2,200 horsepower compressor station and 22 miles of 14-inch pipeline for the purpose of transporting natural gas from Rayne Field to Opelousas, Louisiana, where the gas will be connected to its Beaumont-Koscuisko interstate pipeline system.

Applications for certificates of public convenience and necessity for the sale of natural gas from Rayne Field to Texas Eastern under the aforesaid gas purchase contracts, were filed by Continental[2] on April 17, 1957, Marr[3] on July 15, 1957, Sun[4] on July 17, 1957 and by General Crude[5] on July 22, 1957.

These applications were consolidated and a hearing was held thereon. An initial decision[6] was filed by the Presiding Examiner on April 15, 1958, authorizing the proposals and issuing unconditioned certificates of public convenience and necessity under Section 7 of the Natural Gas Act. Exceptions to the initial decision were filed with the Commission.

Before the Commission acted on the exceptions the Court of Appeals, 3rd Circuit, in the *Public Service Commission of New York* v. *F.P.C.*, (CATCO) 257 F. 2d 717[7] reversed an order of the Commission granting unconditioned certificates of public convenience and necessity for the sales of natural gas from off-shore Louisiana by independent producers at 22.4¢ per Mcf, including tax.

Following the 3rd Circuit decision the producers herein, Continental, Marr, Sun and General Crude, each filed notices of the termination of their sales contracts with Texas Eastern and requested withdrawal of their applications for certificates of public convenience and necessity, which requests were granted by the Commission.

Texas Eastern thereupon filed a petition to reopen the hearing and to amend its application for a certificate of public convenience and necessity to reflect a change in its plan for acquiring the Rayne Field gas. Under the new plan Texas Eastern proposed to acquire the leasehold interests in the reserves formerly committed to the contracts by Continental, Marr, Sun and General Crude.

The petition to reopen was granted, and at the conclusion of the hearing a motion to waive the initial decision was made, which was granted by the Commission.

On June 23, 1959, by its Opinion No. 322, *Texas Eastern Transmission Corporation*, 21 FPC 860, the Commission granted an unconditioned certificate of public convenience and necessity for the compressor station and 22 miles of 14-inch line to connect the Rayne Field gas to the Texas Eastern interstate pipeline at Opelousas. In this opinion the Commission said, at page 861, "The Rayne Field is one of the few large and fully developed gas reserves *not presently committed to and serving a market*" (emphasis supplied). In its Third Supplement to the aforesaid petition to reopen the hearing filed on December 15, 1958, "Texas Eastern advised the Commission that it had acquired the right to purchase the entire working interest of Continental, Marr, Sun and General Crude in the Rayne Field leases, under the terms and conditions of the final Lease Purchase Agreement dated December 4, 1958, which

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[1] Docket No. G–12446.
[2] Docket No. G–12432.
[3] Docket No. G–12885.
[4] Docket No. G–12913.
[5] Docket No. G–12931.
[6] 21 FPC 869.
[7] Affirmed *sub nom. Atlantic Refining Co.* v. *Public Service Commission*, 360 U.S. 378 (1959), commonly referred to as the "CATCO" case.

it filed with the Commisssion," *Cf.* 21 FPC 860, 862. Texas Eastern would thereby acquire "the oil and gas leases and related properties . . . insofar as they apply to the proved reserves" p. 863. The Commission made no inquiry into the cost to Texas Eastern of acquiring the Rayne Field leases and related properties but the Commission did state, at page 864:

> In our judgment, the record in this case amply supports the conclusion that the elements of public convenience and necessity are satisfied by Texas Eastern's modified project, without examining into the cost to Texas Eastern of the Rayne Field leases to the extent advocated . . . . Texas Eastern has not filed an application for a certificate authorizing the acquisition of the Rayne Field leases and we have no authority to issue such a certificate. However, we have considered all the circumstances pertaining to the company's acquisition of the Rayne Field leases and the effects of this transaction on the need and convenience of the public proposed to be served, including the extent and accessibility of this gas supply; the benefits thereof in enabling Texas Eastern to meet consumer demands; the terms and conditions of the lease sale and purchase agreements including the price to Texas Eastern of the gas thereunder; the claimed savings accruing to Texas Eastern from acquiring the leases rather than purchasing the gas under gas purchase contracts; and the other factors present here. And we conclude that the company's modified project, as it would include and rely on the acquisition of the Rayne Field leases, is required by the public convenience and necessity and otherwise meets the requirements of Section 7(e) of the Act.

The Commission went on to say that Texas Eastern, through Louisiana Gas[*] woud pay Continental *et al.* the sum of $12,420,500 in cash upon the issuance by the Commission of a satisfactory certificate of public convenience and necessity to Texas Eastern and Texas Eastern will simultaneously make 16 serial promissory notes to each of the sellers payable over a 16-year period in the total amount of $121,975,200 as the balance of the purchase price for the leases. The notes were to be secured by a mortgage and without interest. The sellers retained a production payment out of the liquids produced with the gas, they also reserve the leasehold rights to all crude oil production and gas which may be produced from below the Nodosaria A Sand. The leases to be conveyed to Texas Eastern were alleged to cover an estimated reserve of 988,771,000 Mcf of natural gas.

The Public Service Commission of the State of New York filed a motion for a rehearing in Opinion 322 in order to "determine upon what price for the acquisition of the Rayne Field leaseholds, public convenience and necessity would require authorization of the related construction herein proposed by Texas Eastern," contending that this is "the Commission's only opportunity to require producer disclosure of the costs associated with this gas and their relation to the sale price" of these leases. 21 FPC 860, 864. The motion was denied and the Public Service Commission of the State of New York filed its petition in the Court of Appeals, D.C. Circuit, for a review of the Federal Power Commission's Opinion No. 322.

The Court of Appeals, D.C. Circuit, on December 8, 1960, in *Public Service Commission of the State of New York* v. *F.P.C.*, 143 F. 2d 143, held the acquisition of the leasehold interest in gas reserves was beyond the jurisdiction of the Commission, nevertheless the pipeline construction project and the transactions by which Texas Eastern will dispose of the gas thus acquired clearly are within

[*] The Louisiana Gas Corporation is a Delaware corporation formed by Texas Eastern for the purpose of acquiring the Rayne Field leases through it.

acquired by Texas Eastern, *was not*, at the time of the acquisition, *connected* the CATCO[9] decision, to inquire into Texas Eastern's acquisition costs based upon the Commission's responsibility to regulate the purchaser (Texas Eastern), regardless of the status of the seller. The order of the Commission in its Opinion 322 was reversed and remanded, the Court stating:

> Two courses are open to the Commission. It may, by clarification of the order presently under review, expressly disclaim any approval of the price to be paid for natural gas by the applicant. See Kansas Pipe Line and Gas Co. *et al.*, *supra* note 4. Or it may reopen the record in the certificate proceeding to permit Texas Eastern to establish by adequate evidence that the acquisition costs which it proposes to incur will be consistent with the public convenience and necessity.

On July 14, 1961, the Commission issued its "Order Reopening Proceeding, Prescribing Procedures and Fixing Date of Hearing," 26 FPC 167. Texas Eastern was afforded the opportunity to "establish by adequate evidence that the acquisition costs which it proposes to incur will be consistent with the public convenience and necessity."[10] The order also defined, but did not limit, the issues as a guide to the course of the reopened proceeding which was to be convened on October 23, 1961. Parties previously permitted to intervene were permitted to intervene in the reopened proceeding.

Hearings were held at which only Texas Eastern offered evidence. At the conclusion of the hearing on December 7, 1961, those desiring to do so were permitted to file briefs, and briefs were filed by Texas Eastern, the Staff, the Public Service Commission of New York, the Public Service Electric and Gas Company, the Long Island Lighting Company, the United Gas Improvement Company and the Philadelphia Electric Company, the latter two filed a joint brief.

The Public Service Commission of New York, in its petition to review the Commission's order in Opinion 322, complained only of the Commission's finding as to the cost of the Rayne Field acquisition, and the Court of Appeals, D.C. Circuit, in its decision made no reference to the feasibility of the proposed construction, nor the market for the Rayne Field gas. These aspects of a certificate application under Section 7 of the Act were not among the issues defined by the Commission to be heard in this reopened proceeding. They are herein considered to have been affirmatively determined by the Commission in its Opinion 322, 21 FPC 860.

Before considering the merits of the Texas Eastern proposal the question of the jurisdiction of the Commission, under the Natural Gas Act, over the acquisition of these Rayne Field leases warrants consideration because the Staff, and at least one of the intervenors, vigorously contend in their briefs the Commission does have jurisdiction over such acquisitions.

Section 1(b) of the Natural Gas Act states, in part,

> The provisions of this Act shall apply to the *transportation* of natural gas *in interstate commerce* to the *sale* in *interstate commerce* of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and *to natural gas companies engaged in such transportation or sale* . . . [Italics supplied.]

This record discloses the Rayne Field leases were acquired by Texas Eastern without the approval of the Commission. This record, as was the first record (21 FPC 860, 861), is clear that the natural gas under the Rayne Field leases

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[9] See footnote 7, *supra*.

[10] This being the second of the "two courses . . . open to the Commission." *Public Service Commission of New York* v. *F.P.C.*, 287 F. 2d 143, 146.

acquired by Texas Eastern, *was not*, at the time of the acquisition, *connected* with any pipeline transporting natural gas in interstate commerce and, further, the natural gas under the Rayne Field leases acquired by Texas Eastern had not, at the time of the acquistion, been dedicated to any sale in interstate commerce. As far back as 1949, the Commission contended it had jurisdiction over the sale by Panhandle of certain leases and leasehold interests covering an estimated 12 per cent of the total gas reserves of Panhandle but the Supreme Court in *F.P.C.* v. *Panhandle Eastern Pipe Line Company et al.*, 337 U.S. 498, recognized and upheld the traditional industry practice of a natural gas company to buy and/or sell leases and leasehold interests which are "*not connected* with any pipeline system" [emphasis supplied] without the approval of the Commission. From this, it would appear, one of the prerequisites to Commission jurisdiction is that the natural gas under the leases or leasehold interests must first be connected to a pipeline system transporting natural gas in interstate commerce. The Commission argued before the D.C. Circuit, in the following case, it did not have jurisdiction over Texas Eastern's acquisition of the Rayne Field leases and leasehold interests and, in its opinion, the Court of Appeals, D.C. Circuit, in *Public Service Commission of the State of New York* v. *F.P.C.* 287 F. 2d, 143, 145 said ". . . the Commission has been held to lack jurisdiction over gas leases" citing *F.P.C.* v. *Panhandle, supra.* It is contended in the brief's filed herein the Supreme Court reversed its decision in the *Panhandle* case, *supra*, by its decision in *Phillips Petroleum Co.* v. *Wisconsin et al.*, 1954, 347 U.S. 672. Quite to the contrary. In *Phillips* the Supreme Court recognized and reaffirmed the Panhandle prerequisite of the gas being attached to an interstate system of pipelines before the Commission acquired jurisdiction. In *Phillips* the Supreme Court was meticulous in saying, at page 675,

> The gas flows from the producing wells, in most instances at well pressure, through a network of converging pipelines of progressively larger size to one of twelve processing plants, where extractable products and impurities are removed. . . . After processing is completed, the gas flows from the processing plant through an outlet pipe, of varying lengths up to a few hundred feet, to a delivery point where the gas is sold and delivered to an interstate pipeline company. The gas then continues its flow through the interstate pipeline system until delivered in other states.

From this quotation it is obvious the natural gas under consideration by the Supreme Court in its *Phillips* opinion, *supra*, had *previously* been attached to, or *connected with*, an interstate system of pipelines and, because of this connection, the gas flowed in interstate commerce and thereby become subject to the jurisdiction of the Commission.

In applying the principles of the *Panhandle* and *Phillips* opinions, *supra*, to the evidence of record in this hearing, it is concluded the Commission was without jurisdiction over the Rayne Field lease and leasehold acquisition and the natural gas under said leases and leaseholds by Texas Eastern until (1) the gas was connected to an interstate system of pipelines or (2) the gas was dedicated to a sale in interstate commerce.[11] This is not to say, however, that the Commis-

[11] In arriving at this conclusion the Examiner is fully cognizant of an initial decison filed January 8, 1962, in *Tennessee Gas Transmission Company et al.*, Docket No. G–14562 *et al.* Subsequent to the filing of this decision, and before the Commission had acted upon the exceptions filed thereto, amended applications were filed by all parties which materially changed the manner in which the natural gas would be acquired from the producers. These amended filings were accepted by the Commission and upon motions duly filed the proceedings were reopened and remanded for further hearing upon the amended applications. Thus the matters disposed of by the Examiner in his initial decision are no longer before the Commission. See Commission order issued March 26, 1962, in *Tennessee Gas Transmission Company et al.*, Docket No. G–14562, 27 FPC 610.

sion is without jurisdiction to regulate the purchaser of the natural gas, in this case Texas Eastern, and to determine at what price the public convenience and necessity requires the dedication of the Rayne Field gas by Texas Eastern to a sale in interstate commerce for resale to consumers of natural gas in other states. The Courts have been unequivocal in requiring the Commission to give careful consideration to the price paid for natural gas by an interstate system to the end that natural gas may be delivered to the consumer at the lowest reasonable cost, or price.

Following the issuance of the unconditioned certificate of public convenience and necessity by the Commission on June 23, 1959, by its Opinion 322, *supra*, Texas Eastern moved promptly and acquired the Rayne Field leases and leasehold interests on July 27, 1959.[12] In its ordering paragraph (D) the Commission gave Texas Eastern six months' time from the date of the issuance of Opinion 322 within which to construct the facilities proposed and authorized and to place such facilities in operation. Texas Eastern on March 29, 1960, filed its affidavit stating the facilities had been constructed and itemized the costs thereof. Between the date the facilities were placed in operation and January 1, 1961, Texas Eastern took approximately 65,000 MMcf of natural gas into its interstate system from the Rayne Field for resale in interstate commerce.

Because the Commission did not have jurisdiction over the acquisition of these Rayne Field leases and the natural gas thereunder presents no legal barrier to the Commission's jurisdiction over the purchaser of the gas. This jurisdiction attaches upon the acceptance by Texas Eastern of a certificate of public convenience and necessity issued by the Commission upon the application of Texas Eastern for authorization to connect, by the construction and operation of the facilities herein proposed, the Rayne Field gas reserves to its interstate system, which, by its market showing in the previous hearings herein dedicated this particular Rayne Field gas to out-of-state markets for resale for ultimate public consumption. The Act, as above shown, confers jurisdiction upon the Commission over "the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use." And, as was said in *Atlantic Refining Co. et al.* v. *Public Service Commission of New York et al.* (CATCO) 1959, 360 U.S. 378, 389, "Section 7(e) vests in the Commission control over the conditions under which gas may be initially dedicated to interstate use." The Supreme Court, went on to say ". . . once so dedicated" by the acceptance of a certificate of public convenience and necessity "there can be no withdrawal of that supply from continued interstate movement without Commission approval." From the words of the statute—the Natural Gas Act—and the decision of the Supreme Court in the CATCO case, *supra*, there can be no doubt as to the jurisdiction of the Commission over the conditions under which Texas Eastern may transport and sell the Rayne Field gas in interstate commerce.

The conditions under which Texas Eastern may transport and sell the Rayne Field gas remain for consideration. By its order reopening these proceedings the Commission directed Texas Eastern to file (1) an up-to-date reserve and deliverability study for the Rayne Field to include actual production to date, (2) annual production plans for Rayne Field extending through to the estimated

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[12] Also, on the same date Texas Eastern entered into a management agreement, through the Louisiana Gas Company with Continental Oil Company, one of the sellers and the principal developer of Rayne Field, under which Continental would manage, control, further explore, develop, maintain, produce and deliver the Rayne Field leases and gas for the use and benefit of Texas Eastern, all as shown by Exhibit X–19 herein.

life of the field, (3) an exhibit to show the proposed method of accounting by Texas Eastern for the Rayne Field transaction and all costs incident thereto, and (4) studies showing the cost of making natural gas from Rayne Field available to the Texas Eastern system, including every cost associated, either incurred and/or anticipated, in the acquisition, further development, production, operation and maintenance of Rayne Field which Texas Eastern claims should be considered in future determinations of the justness and reasonableness of Texas Eastern's rates. Thus the first issue to be considered is the Mcf cost of the Rayne Field gas to Texas Eastern, or, in lieu thereof, the initial price at which it may take, as required by the public convenience and necessity, the Rayne Field gas into its interstate transmission system for transportation and resale in interstate commerce for ultimate public consumption. The Commission in its Opinion 322, 21 FPC 860, 867 found, based upon the evidence then before it, the "average cost of producing the Rayne Field gas would be 20.59¢ per Mcf," exclusive of severance taxes.

The evidence by Texas Eastern would show a residue[13] gas reserve in the Rayne Field on January 1, 1961 of 924,678,000 Mcf at 14.73 psia and 60° F.[14] (Ex. X–2, Sh. 1, Col. M, ln. 27), together with an estimated availability commencing January 1, 1961 through the year 1989 of 29,586,356 barrels of condensate and 21,812,852 barrels of plant liquids[15] (Ex. X–2, Sh. 2, Cols. (d) and (e), ln. 30). The witness who sponsored this reserve study had previously testified in the first hearing sponsoring Exhibit M–13, an estimate of the natural gas reserves in the Rayne Field as of January 1, 1959, showing then an estimated reserve, as of that date, of 988,771,000 Mcf (tr. 1813). His testimony now is that four additional wells were drilled in the Rayne Field between January 1, 1959 and January 1, 1961 which resulted in proving up additional reservoirs but had little effect upon the total field reserves. Regarding the difference between his January 1, 1959 estimated reserve of 988,771,000 Mcf and his January 1, 1961 estimated reserve of 924,678,000 Mcf he says is accounted for by the interim production of 65,396,000 Mcf (tr. 1813) (988,771,000—65,396,000=923,375,000 Mcf). Another witness, sponsoring the same exhibit, stated two additional dual completion wells would be required to be drilled in 1962, one dual completion well in 1971 and an additional dual completion well in 1972 in order to complete the development of Rayne Field. During the life of the field certain of the existing wells would have to be recompleted to deeper producing sands to increase the deliverability from that sand. The estimated cost for the drilling of the four dual completion wells was shown to be $2,000,000 (Ex. X–5, p. 2), these costs, in addition to well workover and recompletion costs are to be paid by Texas Eastern since it owns the leases. It appears virtually impossible, from the record, to determine the future costs to Texas Eastern for the Rayne Field since they are predicated upon assumptions and estimates. The costs are actually unimportant since the issue here depends upon the base price at which

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[13] The term "residue gas," as here used, refers to that gas which is available for sale after having taken into account the combination of losses due to condensation in the reservoir, the extraction of separator or condensate and plant liquids (tr. 1815).

[14] In Ex. X–2, Sh. 1, Col. m, ln. 16, it was estimated there was initial gas in place of 1,183,517,000 Mcf and, on ln. 17, terminal gas in place of 89,479,000 Mcf of which, the witness Olson, a vice president of DeGolyer and MacNaughton, testified 93 percent would be recovered from Rayne Field by Texas Eastern. (Tr. 2331)

[15] The revenue from the sale of this condensate and plant liquids goes first, to partially reimburse Continental for the management and operation of Rayne Field and, second, the remainder to Continental *et al.* as their interests may be, until the mortgage from buyer to sellers is paid in full. Thereafter any revenue from this source is to be retained by Texas Eastern.

the public interest requires the Rayne Field gas from Texas Eastern. This "in line" price will subsequently be developed.

Since this is a certificate hearing under Section 7 of the Act the immediate issue is to determine at what price—as CATCO says, under what conditions—may Texas Eastern dedicate the Rayne Field gas to interstate use, to state this issue in different words, with the same purport, at what price does the public convenience and necessity [16] require the Rayne Field gas from Texas Eastern? In considering these conditions—or the initial price—the Examiner will again refer to CATCO, *supra*, and use that decision as his guide, as did the Commission itself in its Opinion No. 351, issued January 22, 1962, in a matter very comparable to these proceedings, to determine an "in line" initial price. In CATCO the Supreme Court said the Act does not require a determination of just and reasonable rates in a certificate application, as is required in a rate case. The Court then went on to say a determination of a "just and reasonable" rate is not a prerequisite to the issuance of a certificate, however, the Commission is required to give most careful scrutiny to proposed initial prices. These must be shown to be required by the public convenience and necessity otherwise the Commission in the exercise of its discretion may attach such conditions to the certificate of public convenience and necessity as it believes necessary or the application must be denied. In its review of the Commission's Opinion No. 322 the Court of Appeals, D.C. Circuit, 287 F. 2d, 143, 145 in applying the CATCO rule said, "we read that decision as holding that where a natural gas company seeks an unconditional certificate to make new sales of natural gas at proposed prices which are 'out of line' with existing prices, or which will tend to have an inflationary impact on the natural gas market, it is under an obligation to demonstrate upon the record the reasons why such increased prices are justified by the 'public convenience and necessity.'" The Court then went on to say the "petitioner claims that the total cost to Texas Eastern for each Mcf of Rayne Field gas will be 22.89 cents, including Louisiana tax of 2.3 cents" and then they said ". . . we think it clear that the price is high enough to be in the disputed area to which the CATCO rule applies."

The record contains evidence of the cost of purchasing gas, at certificated prices, and transporting this gas to Opelousas, Lousiana—this being the point where the Rayne Field gas enters the Texas Eastern interstate system—to compare these F.O.B. Opelousas prices with the proposed Rayne Field prices.

Texas Eastern says it pays 14.4¢ per Mcf at 15.025 psia for Wilcox Trend gas and the estimated cost for transportation to Opelousas was 9.6¢ per Mcf for a total cost, at that point, of 24.0¢ per Mcf. Gas purchased in Texas Railroad Districts 2 and 4 at 15.6¢ per Mcf at 15.025 psia costs 9.1¢ per Mcf for transportation for an Opelousas cost of 24.7¢ per Mcf and that Pemex gas costing 15.6¢ per Mcf at 15.025 psia costs 9¢ per Mcf transportation for an Opelousas total cost of 24.6¢ per Mcf.

Also the record contains evidence of prices being paid, and related information on sales, in South Louisiana for natural gas under long term contracts dated between January 1, 1958 and June 30, 1959. As will be seen hereafter these prices are not applicable here.

Here, as the Commission said in its Opinion 351, the initial price should be determined as of the dates of the various contracts of acquisition which were initially executed on February 1, 1957 and the application dedicating the gas to an interstate market filed with the Commission on April 22, 1957. Therefore

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[16] The basis for regulation under the Natural Gas Act is the "public interest." Section 1(a) of the Act, see also *F.P.C. v. Sierra Pacific Power Co.*, 350 U.S. 348, 355.

the "in line" price as of April 22, 1957 must be herein determined since that was the date on which the Rayne Field gas was dedicated to an interstate market by Texas Eastern. The area price levels as announced by the Commission in its Statement of General Policy No. 61–1 on September 28, 1960, 24 FPC 818, as amended,[17] were not then applicable and no area rate proceedings have yet been held by the Commission to determine area rate levels.

There is a further reason why the "in line" price must be determined as of April 22, 1957, if this was not so then Texas Eastern might be enriched by the procedural delays herein. The price at the time of the dedication of the gas to an interstate market must be "in line" with other prices in the area as of that period.

While the CATCO case did not define what was meant by a price being "in line" the Ninth Circuit said in the *United Gas Improvement Co.* v. *F.P.C.* 283 F. 2d 817, 823 the "line" to be referred to "may properly be referenced to relevant existing producer prices under which substantial amounts of natural gas move in interstate commerce" and that the prices must be comparable. See, *Public Service Commission of New York* v. *F.P.C.* 287 F. 2d 146, *cert.* denied 365 U.S. 880; *United Gas Improvement Co.* v. *F.P.C.* 287 F. 2d 159; *United Gas Improvement Co.* v. *F.P.C.* 290 F. 2d 133.

In its Opinion 351, the Commission had under consideration, on remand from the Supreme Court in CATCO, a sale of natural gas by the Continental Oil Company—the same Continental Oil Company that thereafter sold its interest in the Rayne Field leases to Texas Eastern—and others to the Tennessee Gas Transmission Company from leases located "below sea bed out in the Gulf of Mexico some 15 to 25 miles offshore from Cameron and Vermilion Parishes,[18] Louisiana," 360 U.S. 378, 382. The CATCO contracts with Tennessee provided for an initial base price of 21.4¢ per Mcf at 15.025 psia, plus 1¢ tax. This price was much higher than Tennessee was then paying for gas. The Commission, in Opinion 351, said at page 102, "a price . . . is not in line as of a given time if it is the highest price or in the highest group of prices theretofore paid" and held, as did the Supreme Court, that a 1956 contract for the sale of gas at that initial base price was clearly out of line. A certificate was issued conditioned at a price of 18.5¢ per Mcf at 15.025 psia as being the "in line" price even though that price was higher than the majority of prices in that area in 1956.

In summary, the various initial price computations are as follows, (1) the original gas purchase contracts provided for an initial price to Texas Eastern of 22.6¢ per Mcf plus 1.3¢ per Mcf for a total of 23.9¢ per Mcf, see 21 FPC 860, 861; then Texas Eastern acquired the leases and, by their Exhibit X–15 herein, show a total cost of service, including a 6 percent rate of return plus estimated Federal income taxes, of $138,950,200, an average cost of 18.79¢ per Mcf at 15.025 psia, exclusive of Louisiana tax; and in Exhibit X–16, by including the

[17] By its Fourth Amendment to its Statement of General Policy No. 61–1, issued October 31, 1961, 26 FPC 661, the Commission said "It is apparent that it would be contrary to the public interest for us to maintain a price level in Southern Louisiana" of 21.5¢ per Mcf at 15.025 psia, plus state taxes, as announced in its First Amendment on October 25, 1960, 24 FPC 902, "which the courts have ruled out of line." "We conclude that, effective this date" October 31, 1961, "the ceiling price level for initial sales in Southern Louisiana, inclusive of state taxes, shall be 21.25¢ per Mcf (at 15.025 psia)." Since the Louisiana state tax as of that date was 2.3¢ per Mcf then the base ceiling price, exclusive of state taxes, would be 18.95¢ per Mcf at 15.025 psia.

[18] Rayne Field is located in Acadia Parish, Louisiana, which is immediately north of and contiguous to Vermilion Parish, and Cameron Parish is immediately west of and contiguous to Vermilion Parish, all in the State of Louisiana.

2.3¢ per Mcf Louisiana tax, the average cost amounts to 21.09¢ per Mcf at 15.025 psia; further, in Exhibit X–17, when the royalty and other outside interest gas is included at 22.6¢ per Mcf, the average cost amounts to 21.37¢ per Mcf and finally, in Exhibit X–18 when all of its costs, and estimated costs, are computed, the average cost becomes 24.34¢ per Mcf at 15.025 psia. The intervenors and the Staff stress the 24.34¢ per Mcf cost as being "out of line."

Since the Commission lacked jurisdiction over the price which Texas Eastern paid for the Rayne Field leases and the natural gas reserves thereunder then it seems immaterial, at least in a certificate application under Section 7 of the Act, what price was paid. The question then is, at what price does the public interest require the issuance of a certificate of public convenience and necessity dedicating the Rayne Field gas to an interstate market, or should the application be denied. The Ninth Circuit appropriately answered this question in *United Gas Improvement Co.* v. *F.P.C.* 283 F. 2d 817, 822, when it said, "the public has an interest in both obtaining reasonable rates and the expeditious dedication of needed new gas reserves."

The Commission found in Opinion 351, page 101, "the average of the initial base prices for contracts dated during the respective quarters of 1956 weighted by 1958 volumes are as follows: 17.00 cents, 18.22 cents, 17.38 cents, 16.65 cents" and that "a price not in excess of 18.5 cents would be 'in line,' although higher than the majority of prices in 1956." This, then, was the Commission's "in line" base price, for a volume of natural gas approximately double the Rayne Field estimated reserves, for contracts executed in August of 1956. As hereinabove stated the "in line" base price here is to be determined as of April 1957, some eight months later. Also, the Commission, by its Fourth Amendment to its Statement of General Policy No. 61–1, on October 31, 1961, *more than four years afterwards*, found the ceiling price level for this area to be 18.95¢ per Mcf, which is but .45¢ per Mcf increase in the "in line" price during the four year period of time.

Predicated upon the record herein and the applicable Commission and court decisions it is herewith determined the "in line" base price, exclusive of taxes, at which the public interest requires the issuance of a certificate of public convenience and necessity to Texas Eastern is 18.5¢ per Mcf at 15.025 psia and a certificate of public convenience and necessity, as so conditioned, is herewith issued to Texas Eastern as hereinafter ordered.

It seems to be appropriate now to consider the effect of the Rayne Field gas costs in relation to any future rates of Texas Eastern. Since this is not a rate case under Sections 4 or 5 of the Act, the Rayne Field gas has already become, or will become upon Texas Eastern's acceptance of the conditioned certificate issued herein, part of the combined gas supply available to Texas Eastern's integrated pipeline system, the future rates of which may, as in the past, be predicated on a system-wide cost of service and a system-wide method of allocation. Combining the costs pertaining solely to the Rayne Field gas with the costs of the remainder of the gas supply available to Texas Eastern means "rolling in" gas costs which may be appreciably greater than the average cost of Texas Eastern's gas supply existing immediately prior to Texas Eastern's acquisition of the Rayne Field gas and leases.

Therefore, to make the information, in the manner herein directed, available in identifying costs in any future rate hearing, or other proceedings, a condition will be attached to the certificate of public convenience and necessity herein issued to Texas Eastern to maintain, as a part of its primary corporate books of account, separate accounts and records in a manner which at all times will show: (1) the acquisition costs together with the costs involved in producing the Rayne

Field gas which is attributable to the working interest in the leases acquired from Continental *et al.*, and (2) all remaining costs incurred by Texas Eastern to make such gas available to its interstate pipeline system, so that by combining the costs of these two categories, the total cost of the Rayne Field acquisition and gas to Texas Eastern as measured at the tailgate of the Rayne Field processing plant will be separately recorded.

Specifically, Texas Eastern is directed to maintain, during the period Rayne Field gas is available to it, in strict accordance with the Commission's Uniform System of Accounts, supplemental accounts which will at all times provide summary and detailed data respecting the cost of the Rayne Field gas to Texas Eastern, as follows:

(1) Respecting the costs of the acquisition of the gas leasehold interests, incurred or to be incurred, by Texas Eastern in its transactions with the producer companies, this accounting must at all times be clear, understandable and evidenced by appropriate and sufficient documents, such as copies of contracts, agreements, correspondence and all memoranda including that relating to Federal income taxes;

(2) The write-off of note payments;

(3) Concerning additional costs borne or to be borne by Texas Eastern in making the gas available to its interstate pipeline system; all gas plant, depreciation, depletion and amortization reserves, revenues, and revenue credits, operating expenses, depreciation provisions, taxes, etc. *i.e.*, all items which would be involved in a cost of service for the Rayne Field gas to Texas Eastern;

(4) All inter-company transactions shall be recorded;

(5) Appropriate records of the Mcf volumes of gas as related to Items (1) through (4) above.

FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this reopened proceeding, the evidence adduced and the briefs filed, the Presiding Examiner finds and concludes, in addition to the findings and conclusions hereinabove stated, that:

(1) The Texas Eastern Transmission Corporation (Texas Eastern) a Delaware corporation whose principal place of business is located at Shreveport, Louisiana, is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sale of natural gas from the Rayne Field, Acadia Parish, Louisiana, by Texas Eastern, all as more fully described in its application for a certificate of public convenience and necessity and as fully considered hereinabove, is, or will be upon the acceptance of the conditioned certificate of public convenience and necessity issued herein, made in interstate commerce, subject to the jurisdiction of the Commission, and such sale by Texas Eastern, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Texas Eastern is capable of properly doing the acts and performing the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission issued thereunder.

(4) The sale of natural gas from the Rayne Field by Texas Eastern, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is required by the public convenience and necessity, and certificates therefor should be issued as hereinafter conditioned and ordered.

(5) It is necessary and appropriate in the administration of the Natural Gas Act that the initial price charged by Texas Eastern for the sale of natural gas from the Rayne Field in interstate commerce be conditioned at 18.5¢ per Mcf, exclusive of taxes, at 15.025 psia.

(6) It is further necessary and appropriate in the administration of the Natural Gas Act that Texas Eastern maintain at all times, during the period the Rayne Field gas is available to it, complete and separate records to accurately reflect the total cost of acquiring the Rayne Field leases and the later costs for producing the Rayne Field gas all as more fully detailed and directed hereinabove.

(7) The public interest requires the issuance of a new certificate of public convenience and necessity to Texas Eastern conditioned at an initial price of 18.5¢ per Mcf of natural gas at 15.025 psia and further conditioned upon the keeping of separate records by Texas Eastern for the Rayne Field natural gas as hereinabove specified in more detail.

(8) The conditions hereunto attached to the new certificate of public convenience and necessity herein issued to Texas Eastern are found to be necessary and required by the public convenience and necessity and in the public interest.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission on appeal, or review by the Commission on its own motion, as provided in its Rules of Practice and Procedure, as amended, that:

(A) A permanent certificate of public convenience and necessity is hereby issued to the Texas Eastern Transmission Corporation conditioned so that the base price, exclusive of Louisiana state taxes, for the Rayne Field natural gas, from the date of initial service, shall be, until lawfully changed in the manner provided by the Natural Gas Act, 18.5¢ per Mcf at 15.025 psia, the certificate hereby issued is further conditioned to require Texas Eastern Transmission Corporation to keep and maintain complete, accurate and separate records reflecting its costs of acquisition, maintenance, operation, production, revenue, etc., as more completely specified hereinabove.

(B) The conditioned permanent certificate of public convenience and necessity herein issued to the Texas Eastern Transmission Corporation is not transferable and shall be effective only so long as it continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations, and orders of the Commission issued thereunder.

(C) The granting of the conditioned permanent certificate of public convenience and necessity to the Texas Eastern Transmission Corporation herein is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the Texas Eastern Transmission Corporation.

HARRY W. FRAZEE,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. RP63-1

ORDER GRANTING APPEAL AND PRESCRIBING SCHEDULE OF BRIEFS

(Issued February 6, 1963)

On January 31, 1963, Staff counsel filed an appeal from the schedule for filing of briefs prescribed by the Presiding Examiner at the close of the hearing in this proceeding on January 28, 1963.

The Examiner has allowed a total period of 107 days for the preparation of such briefs and in addition to providing for seriatim main briefs and reply briefs, has also provided for cross briefs to be exchanged between the staff and interveners. Replies to staff's appeal have been filed by United Gas Pipe Line Company, Southern Natural Gas Company, Texas Gas Transmission Company and Mississippi River Fuel Corporation within the time prescribed by the Commission.[1] In addition, the record on this question has been certified for our consideration.

Based upon our review of all these documents, we believe that the staff's proposal for filing of briefs in this proceeding should be adopted. In the Order Prescribing Hearing Procedures issued in this proceeding on August 6, 1962, 28 FPC 295, the Commission made manifest its objective that final decision herein should be reached as expeditiously as possible.

Following intensive study and analysis of the data submitted by United with its proposed increase and with the cooperation of all the parties in the hearing phase of the proceeding, hearings were concluded shortly after the termination of the suspension period. However, in order that our objective can be fully implemented, it is necessary that all other phases of the proceedings, including briefs to the Examiner, initial decision and exceptions thereto, be similarly expedited. Accordingly, the briefs in this matter should be filed as hereinafter provided.

The Commission orders:

All parties to the proceeding desiring to do so, shall simultaneously file initial briefs on or before March 14, 1963 and reply briefs on or before April 3, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

AMERICAN GAS PIPELINE COMPANY, DOCKET NO. CP63–73; NORTHERN NATURAL GAS COMPANY, DOCKET NO. G–18606

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND TERMINATING CERTIFICATE

(Issued February 7, 1963)

On September 24, 1962, American Gas Pipeline Company (Applicant) filed in Docket No. CP63–73 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition by purchase from Northern Natural Gas Company (Northern) and operation of certain transmission facilities presently being used by Northern to transport natural gas for Metropolitan Utilities District of Omaha, Nebraska (District), and for American Gas Company (American Gas), all as more fully set forth in the application on file with the Commission.

Applicant proposes to acquire from Northern and operate approximately 1.1 miles of 6-inch pipeline extending from a point in Omaha, Nebraska, through the community of Carter Lake, Iowa, to a point in East Omaha, Nebraska, and to continue the transportation service presently being rendered by Northern

[1] Southern Union Gas Company by telegram also stated that it objected to staff counsel's appeal.

through such facilities. Northern presently transports gas for deliveries to Applicant's parent, American Gas, for distribution in Carter Lake and for deliveries to District for distribution in East Omaha. The said facilities were constructed and are presently owned and operated by Northern pursuant to certificate authorization issued by the Commission on October 20, 1959, in Docket No. G–18606, 22 FPC 729.

American Gas and District each purchase their respective requirements for Carter Lake and East Omaha directly from Northern. Northern delivers American Gas' volumes to District at District's Omaha city gate; District transports said gas from the city gate to the point of redelivery to Northern in Omaha where the 1.1 miles of pipeline to be acquired originates. Northern then transports the gas through said pipeline for both District and American Gas and delivers it to them for distribution in East Omaha and Carter Lake.

By agreement, dated March 27, 1959, Northern agreed to construct and operate the subject facilities and American Gas agreed to purchase same. By assignment of August 1, 1962, American Gas' rights and obligations were assigned to Applicant.

Applicant will pay Northern the original cost less accrued depreciation for the subject facilities. The proposed acquisition will be financed from funds obtained from American Gas, Applicant's parent, in exchange for common stock.

Applicant states that upon acquisition of the subject facilities Applicant will continue to operate the facilities and provide the transportation service presently being rendered by Northern, and that no abandonment of facilities or service will be involved.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 29, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, American Gas Pipeline Company, an Iowa corporation having its principal place of business in Council Bluffs, Iowa, upon the consummation of the acquisition of the facilities and the commencement of operation thereof for which authorization is requested herein, will be engaged in the transportation of natural gas in interstate commerce and will be, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The facilities proposed to be acquired and operated by Applicant, as hereinbefore described and as more fully described in the application in this proceeding, will be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the acquisition and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The acquisition and operation of the facilities and the transportation and delivery of natural gas therefrom, as proposed by Applicant, are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's

compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (d) and (e) of Section 157.20 of such Regulations.

(6) Applicant should file, in conformity with the Commission's Regulations under the Natural Gas Act, an appropriate rate schedule for the transportation service hereinafter authorized.

(7) The certificate issued to Northern Natural Gas Company by the Commission's order, issued October 20, 1959, in Docket No. G–18606 [22 FPC 729] should be terminated, and Northern should file a notice of cancellation of its FPC Gas Rate Schedule T–1.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, American Gas Pipeline Company, to acquire and operate the facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (d) and (e) of Section 157.20 of such Regulations.

(C) The acquisition hereinabove authorized shall be consummated and operation begun by Applicant within three months of the date hereof.

(D) Applicant shall file, in conformity with the Commission's Regulations under the Natural Gas Act, an appropriate rate schedule for the transportation service authorized by paragraph (A) above.

(E) The certificate issued to Northern Natural Gas Company by the Commission's order, issued October 20, 1959, in Docket No. G–18606, shall be terminated upon the consummation of the acquisition authorized in paragraph (A) above; further, Northern shall file a notice of cancellation of its FPC Gas Rate Schedule T–1.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.; TEXACO INC., DOCKET NOS. G–16994, G–17779, G–20251, CI60–518, CI61–60, CI61–955, CI61–969, CI61–1416, CI61–1420, CI61–1438, CI61–1463, CI61–1713, CI62–16, CI62–407; CONTINENTAL OIL COMPANY, (OPERATOR), ET AL., DOCKET NO. CI61–586; CONTINENTAL OIL COMPANY, DOCKET NOS. G–16840, G–17521, G–20242, CI62–1504, CI62–1507, CI62–1513; PHILLIPS PETROLEUM COMPANY, DOCKET NOS. G–16611, G–16612, G–19714, G–18375; PAN AMERICAN PETROLEUM CORPORATION, DOCKET NOS. G–16946, G–19223, G–20049, CI60–133 CI60–777, CI61–143, CI61–808, CI61–974, CI62–724, CI62–782, CI62–1341, CI61–127, G–10022, G–17977 (PAUL F. BARNHART) CI61–355; HASSIE HUNT TRUST, DOCKET NOS. G–18897, G–19249, CI61–645; HUNT OIL COMPANY, DOCKET NO. G–18596; H. L. HUNT, DOCKET NO. G–19460

ORDER DENYING REQUEST FOR THE PRODUCTION AND DISCLOSURE OF DOCUMENTS AND APPLICATION FOR SUBPOENA DUCES TECUM AND AD TESTIFICANDUM

(Issued February 7, 1963)*

On January 11, 1963, Texaco Inc. (Texaco) filed an extensive request for the production of all books, papers, press releases, correspondence, memoranda, reports, records, analyses, computations, charts, graphs, schedules, summaries, projections, and writings of any kind whatsoever utilized by the Commission in determining the initial service rate for Southern Louisiana as reflected in its *Statement of General Policy No. 61–1*, 24 FPC 818 (1960), the *First Amendment to the Statement of General Policy No. 61–1*, 24 FPC 902 (1960) and the *Fourth Amendment to the Statement of General Policy No. 61–1*, 26 FPC 661 (1961). In addition Texaco applied for the issuance of a subpoena directing the Secretary of the Commission to appear before the Hearing Examiner in the instant proceeding to testify and to bring with him and produce the aforementioned papers and documents. Similar requests were filed by Continental Oil Company on January 17, 1963, by Phillips Petroleum Company on January 25, 1963, by Pan American Petroleum Company on January 28, 1963 and by Hassie Hunt Trust, Hunt Oil Company and H. L. Hunt on January 28, 1963.[1]

Petitioners filed applications for certificates of public convenience and necessity in the above-listed dockets, pursuant to Section 7 of the Natural Gas Act (Act) requesting authorization to sell gas in interstate commerce. Petitioners have been granted the hearing required by Section 7 of the Act for the receipt of evidence leading to a determination as to whether the public convenience and necessity require the issuance of the requested certificates. (Order in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, issued December 31, 1962). Evidence upon which a determination of the issues in these cases, including the price issue, may be made, accordingly will be entered into the record.

Under the injunction of *CATCO* the Commission must give a most careful scrutiny and responsible reaction to the initial price proposals of producers under Section 7.[2] The Commission, of course, must weigh all factors bearing upon the public interest in determining whether a certificate should issue, and upon what terms. In each case the Commission must proceed upon the evidence before it to determine whether the applicant has supported his proposal by evidence showing the necessity thereof to the present or future public convenience and necessity before a permanent certificate may be issued.

The burden is upon the producer—applicant to prove that a certificate as requested is required by the public convenience and necessity. There is no burden upon the Commission, the Secretary of the Commission or the Commission Staff which must be borne to prove that fact. The effect of the instant request is to place upon the Commission the burden of justifying a policy which it has expressed in its Statement of General Policy No. 61–1, as amended. Neither the Natural Gas Act nor the Administrative Procedure Act casts any such burden upon the Commission. A general statement of policy is a statement issued by an agency to advise the public properly of the manner in which the agency proposes to exercise a discretionary power. See Attorney General's Manual on Administrative Procedure Act, footnote, 3, page 30.

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*Rehearing and reconsideration denied by order issued April 2, 1963, 29 FPC 697.

[1] These parties together with Texaco will hereinafter be referred to as Petitioners.

[2] *Atlantic Refining Co. v. Public Service Commission of N.Y.*, 360 U.S. 378, 391.

While the Statement of General Policy No. 61–1, as amended, sets forth the guideline prices for all gas produced in specific areas for interstate consumption, there has been and can be no demonstration that failure of the Commission to specify and disclose the underlying information which led it to adopt specific "ceilings," or any staff memoranda upon which such determinations may have been based, has resulted or will result in Petitioners being aggrieved in these proceedings.

Our opinion in *Skelly* makes it clear that the Policy Statement sets forth only "guideline" prices at which the Commission indicated it would exercise its discretion in the absence of protest by intervening parties to certificate sales in a particular area.[3] It did not purport to fix the "in-line" price which *CATCO* and the *UGI* cases[4] which followed it make clear are, in the absence of a compelling showing to the contrary, to be the public convenience and necessity price fixed after the statutory Section 7 hearing.

The burden of justifying the price at this hearing rests with the producer-applicant, but to the extent that contract provisions allow, this price may be higher or lower than the guideline price as the evidence demonstrates.[5]

Petitioners have demonstrated no reason justifying the production of the documents and issuance of a subpoena as requested. Accordingly it is necessary that the requests be denied.

The Commission orders:

(A) The requests of Petitioners for the production and disclosure of documents and the applications for subpoena *duces tecum* and *ad testificandum* are hereby denied.

Commissioner Morgan *concurring* for the reasons set forth in his concurring statement issued January 30, 1963, in Amerada Petroleum Corporation, *et al.*, Docket No. CI12–1544, *et al.* 29 FPC 171.

Commissioner Ross *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP63–77

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 8, 1963)

On September 27, 1962, El Paso Natural Gas Company filed in Docket No. CP63–77 an application pursuant to Section 7(e) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery

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[3] See *Skelly Oil Company, et al.*, 28 FPC 401, Opinion 362, Docket No. G–18638, *et al.*, issued on August 30, 1962.

[4] *United Gas Improvement Co.* v. *FPC*, 283 F. 2d 817 (CA, 9) *certiorari* denied 365 US 881, *United Gas Improvement Co.* v. *FPC*, 290 F. 2d 133 (CA, 5) *certiorari* denied 368 US 823.

[5] Our reference in *Skelly* to the fact that the producers in those proceedings would be free to show whether the in-line price at the time of their contracts was the original ceiling price established on September 28, 1960, the lower price found to be the in-line price prior to that date or the 16-cent price established in the 5th Amendment to the Statement of General Policy does not mean that they are confined to any of these three separate prices if the relevant in-line price was in fact at some other level. By this language we meant only to convey the thought that at this hearing all parties would be free to show the proper in-line price, wherever it might happen to fall.

of natural gas to Cascade Natural Gas Corporation (Cascade) at the existing measuring and regulating station located at the terminus of Applicant's 6⅝-inch O.D. Bellingham sales lateral in Whatcom County, Washington, for resale and distribution in the community of Ferndale, Washington, and environs, all as more fully set forth in the application.

The subject sales and deliveries will be made through Applicant's existing facilities without modification or extension. To render the service proposed, Cascade will extend its facilities a distance of approximately 1.6 miles in order to connect its present Bellingham distribution facilities with those facilities necessary to provide service in the community of Ferndale.

The estimated natural gas requirements for Ferndale for the first three years of operation are as follows:

Mcf at 14.73 psia

	1st year	2d year	3d year
Peak day	166	244	266
Annual	29,324	37,158	39,705

The proposed sales and deliveries of natural gas to Cascade will be made on firm and interruptible bases in accordance with Applicant's FPC Gas Tariff, Original Volume No. 3. The gas will be used for residential, commercial, and industrial purposes.

No expenditures or financing will be required to make the subject sales and deliveries. The proposed service will not impair Applicant's ability to meet other firm obligations.

Cascade has received a certificate of public conveniences and necessity from the Washington Public Service Commission and a franchise from the City of Ferndale to sell and distribute natural gas in Ferndale.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 23, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) The sale and delivery of natural gas by Applicant to Cascade Natural Gas Corporation for resale and distribution in Ferndale, Washington, will be made in interstate commerce subject to the jurisdiction of the Commission, and such sale and delivery are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The sale and delivery of natural gas proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), and (e) of Section 157.20 of such Regulations.

(C) The sale and delivery of natural gas hereby authorized shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within nine months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MILLER GAS COMPANY v. CITY GAS COMPANY, FLORIDA GAS TRANSMISSION COMPANY (FORMERLY HOUSTON TEXAS GAS AND OIL CORPORATION), DOCKET NO. CP61-161

ORDER PERMITTING WITHDRAWAL OF COMPLAINT AND TERMINATING PROCEEDINGS

(Issued February 8, 1963)

On January 24, 1963, the Miller Gas Company filed a "Notice of Withdrawal of Complaint", pursuant to Section 1.11(d) of the Commission's Rules of Practice and Procedure, stating that incursions into its service territory by the City Gas Company have ceased. Under these circumstances Miller is of the belief that, "no further action is required in these proceedings." Good cause exists, therefore, for permitting the withdrawal and for terminating the proceedings in this docket.

The Commission finds:

It is necessary and proper in carrying out the provisions of the Natural Gas Act to permit the withdrawal of the above-entitled complaint and to terminate the proceedings in Docket No. CP61-161.

The Commission orders:

(A) The withdrawal of the complaint in Docket No. CP61-161 is hereby permitted.

(B) The proceeding in Docket No. CP61-161 is terminated.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NATURAL GAS PIPELINE COMPANY OF AMERICA,[1] DOCKET NO. CP62-256

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 8, 1963)

On May 4, 1962, Natural Gas Storage Company of Illinois now Natural Gas Pipe Line Company of America (Applicant) filed in Docket No. CP62-256 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of pipeline and field storage facilities at the Herscher Storage Field in Kankakee County, Illinois, to provide for an increase in maximum daily storage withdrawal, all as more fully set forth in the application.

Applicant seeks authorization for the following facilities:

(1) Approximately 9.59 miles of 36-inch pipeline extending from a point of connection with Applicant's existing 36-inch pipeline at the Illinois River to the termini of the existing 30-inch and 36-inch pipelines near Joliet, Illinois;

(2) Three injection-withdrawal wells in the Galesville Reservoir;

(3) Five injector-withdrawal wells in the Mt. Simon Reservoir; and

(4) Additional cushion gas and miscellaneous facilities necessary or convenient to the operation of the above facilities.

The estimated cost of the proposed facilities is $3,264,700, to be financed from the sale of first mortgage bonds.

The subject facilities will be used to provide maximum peak hour withdrawal capacity of 43,750 Mcf and to increase the maximum daily withdrawal from storage by 75,000 Mcf to a total of 875,000 Mcf of natural gas by using all three reservoirs, namely, the Galesville and Mt. Simon at the Herscher Field and the Cooks Mills Field. Past experience has shown that Applicant's utility customers require peak hour deliveries equal to approximately 5% of peak day deliveries. Although the ratio has not changed over a number of years, its effect on volumes to be delivered becomes of more importance as the volume of total daily deliveries increases. The subject facilities have been designed to incorporate this peak hour concept, and accordingly the facilities will be capable of handling an hourly delivery of 43,750 Mcf which is 5% of the proposed peak day storage delivery of 875,000 Mcf.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 31, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois is a "natural-gas company" within the meaning of the Natural Gas Act heretofore found by the Commission in its order of October 13, 1942, in Docket No. G-235 (3 FPC 830).

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[1] The application was filed by Natural Gas Storage Company of Illinois. On October 1, 1962, the Commission authorized Natural Gas Pipeline Company of America to acquire and operate Natural Gas Storage Company of Illinois. The acquisition was completed on November 19, 1962.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Natural Gas Pipeline Company of America, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within twelve months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

THE OHIO FUEL GAS COMPANY, DOCKET NO. CP63-101

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 8, 1963)

The Ohio Fuel Gas Company (Applicant) filed on October 19, 1962, an application pursuant to Section 7 of the Natural Gas Act, as amended, for a certificate of public convenience and necessity authorizing it to construct and operate certain natural gas transmission facilities necessary to extend gas service to the Ava Brick Corporation in Noble County, Ohio, as hereinafter described, all as more fully represented in the application.

737-369—64——21

Applicant proposes to construct and operate the following facilities:

Approximately 1.0 mile of 3½" O.D. lateral pipe line and industrial sale metering and regulating equipment for service to Ava Brick Corporation in Noble County, Ohio.

Together with valves, fitting and incidental facilities necessary for practical operation.

The estimated peak day and annual requirements of the prospective customer are as follows:

	Mcf
Peak day	300
Annual	86,000

Peak day deliveries are subject to curtailment in order to maintain service to domestic customers.

Service to this prospective customer will not impair Applicant's ability to serve its existing customers.

The proposed construction including metering facilities on the customer's premises is estimated to cost $18,827. Applicant will finance this amount from cash on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 30, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, The Ohio Fuel Gas Company, an Ohio corporation having its principal place of business in Columbus, Ohio, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 21, 1945, in Docket No. G–371 (4 FPC 1033).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale and delivery of natural gas, as hereinbefore described, are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations, and that the construction of the facilities authorized by this order should be com-

pleted and said facilities placed in actual operation within six months from the date on which this order issues.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing The Ohio Fuel Gas Company to construct and operate the facilities hereinbefore described, and to deliver natural gas in accordance with the terms of the contract between Applicant and the Ava Brick Corporation which is a part of the application herein.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

(C) The construction of the facilities authorized by this order shall be completed and said facilities shall be placed in actual operation within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP61-119

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 8, 1963)

On October 17, 1960, as supplemented on October 19, 1962, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP61-119 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a measuring and regulating station in Saginaw County, Michigan, to be used for the sale and delivery of natural gas to Michigan Gas Storage Company (Storage Company), an existing customer, for resale to Consumers Power Company (Consumers) for resale and distribution, all as more fully set forth in the application as supplemented.

Consumers proposes to provide retail gas service in the communities of St. Charles, Chesaning and Shields, Michigan, and to make industrial sales to Dow Chemical Corporation.

Storage Company has received a certificate of public convenience and necessity for its facilities in Docket No. CP61-98.

The estimated cost of the subject facilities is $20,000.

On February 9, 1961, the Commission issued temporary authorization for the construction and operation of the subject facilities.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 29, 1963, concerning the matters involved in and the issues presented by the application, as supplemented, herein. No protest to the granting of the application or notice of intervention has been received. A petition to intervene was filed on November 23, 1960, by Michigan Consolidated Gas Company requesting a limitation on certain facilities which Applicant proposed to construct and operate. By its supplement to the application Applicant withdrew its request for authorization for the facilities to which the Petitioner objected, and the petition was thereby rendered moot. No other petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30 (c) (1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Panhandle Eastern Pipe Line Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable

Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NOS. CP60–122, CP61–203; ALGONQUIN GAS TRANSMISSION COMPANY, DOCKET NOS. CP60–124, CP61–220; UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP61–151; SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP61–206; TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP61–247; ARKANSAS-MISSOURI POWER COMPANY, DOCKET NO. CP62–20

ORDER MODIFYING OPINION NO. 372 AND ORDER ISSUED DECEMBER 17, 1962

(Issued February 8, 1963)

On January 16, 1963, Counties Gas Company (Counties) filed an application for rehearing and reconsideration requesting the following changes in the Commission's Opinion No. 372, 28 FPC 1035, and order issued in this case on December 17, 1962:

(1) Substitution of Belleville Gas Company (Belleville) and Valley Gas Company (Valley) as parties to this proceeding in lieu of Counties with respect to the allocations of gas requested for the Belleville and Martinsburg-Roaring Springs areas, respectively.

(2) Authorization of a sale of 674 Mcf per day at 15.025 psia by Texas Eastern Transmission Corporation to Belleville.

The requested substitution for Belleville and Valley arises from the denial of Counties' omnibus application for a plurality of service area authorization by the Pennsylvania Public Utilities Commission (Pennsylvania PUC). This denial necessitated the refiling of separate applications for specified services areas. To conform to prevailing Pennsylvania PUC policy, separate subsidiaries of Penn Fuel Gas, Inc. were constituted as applicants in the refiled proceedings.

Our earlier denial of the requested allocation of gas to the Belleville area was premised solely upon legal inability of Counties to perform. This defect, however, has been corrected by the certification of Belleville by the Pennsylvania PUC. The record indicates that the proposed service to the Belleville area is economically feasible and our order issued December 17, 1962 should be modified to direct Texas Eastern to sell a maximum of 674 Mcf of gas per day at 15.025 psia to Belleville.

The Commission orders:

Opinion No. 372 and order issued December 17, 1962 is hereby modified in the following respects:

(A) Belleville Gas Company and Valley Gas Company are made parties to this proceeding as successors to Counties Gas Company with respect to the allocations of gas requested for the Belleville and Martinsburg-Roaring Springs areas, respectively.

(B) Texas Eastern Transmission Corporation is directed to sell to Belleville Gas Company a maximum of 674 Mcf of gas per day at 15.025 psia.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TEXAS EASTERN TRANSMISSION CORPORATION AND UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP63-135

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 8, 1963)

On November 19, 1962, Texas Eastern Transmission Corporation (Texas Eastern) and United Gas Pipe Line Company (United) filed in Docket No. CP63-135 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation by United of an existing 8-inch tube orifice station located near the City of Tyler in Smith County, Texas, as an additional point of delivery of exchange gas by United to Texas Eastern under existing exchange agreements, and authorizing the exchange of natural gas by Applicants at this point, all as more fully set forth in the application.

The exchange agreements, on file as United's Rate Schedules X-1, X-2, and X-3 and Texas Eastern's Rate Schedule X-6, provide for the exchange of natural gas on a gas-for-gas basis without the payment of charges by either party. It is contemplated that approximately 3000 Mcf of exchange gas per day will be returned at the new exchange point.

No financing or expenditures are necessary to effect the subject proposal.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 31, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) Applicant, Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued October 11, 1947, in Docket No. G-880 (6 FPC 171).

(3) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the operation thereof by United and the exchange of natural gas between United and Texas Eastern through said facilities are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(5) The operation of the subject facilities by United and the exchange of natural gas through said facilities between United and Texas Eastern are

required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing United Gas Pipe Line Company to operate the subject facilities to deliver natural gas to Texas Eastern Transmission Corporation and authorizing United and Texas Eastern to exchange natural gas through said facilities, all as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP63-82

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 8, 1963)

On October 3, 1962, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP63-82 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities for the purpose of transporting and supplying to Lynchburg Gas Company additional volumes of natural gas to enable it to serve the town of Scottsville, Virginia and the nearby industrial plant of the United States Rubber Company for fabric drying purposes. The proposed facilities are to consist of a sales meter station and appurtenant equipment to be located in Fluvanna County, Virginia at mile post 1495.93 and to include a tap on Applicant's 30-inch main transmission line.

The estimated capital cost of the facilities is $11,600 which is to come from funds on hand and for which Applicant will be reimbursed in full by Lynchburg Gas Company. The volumes of gas to be sold and delivered through the proposed facilities are estimated at a maximum of 350 Mcf per day, of which 100 Mcf will be on a firm basis.

Pursuant to due notice, a public hearing was held in Washington, D.C. on January 29, 1963, respecting the matters involved in and the issues presented by the application. No petition to intervene or protest to the granting of the application has been received. Staff Counsel moved orally at the hearing that

the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a natural gas company as alleged in its application.

(2) The facilities above described, as more fully described in the application, are subject to the jurisdiction of the Commission and the sale and delivery of natural gas to Lynchburg Gas Company for ultimate distribution to the people in the town of Scottsville, Virginia are required by the public convenience and necessity.

(3) Applicant is willing and able to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities for the purposes above stated are required by the public convenience and necessity and a certificate therefore should be issued as hereinafter ordered and conditioned.

(5) Until otherwise ordered by the Commission the volume of gas to be delivered by Applicant to Lynchburg Gas Company shall be limited to 100 Mcf of firm gas per day and 250 Mcf of interruptible gas per day.

(6) A request during the public hearing by Staff Counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and is hereby issued authorizing Applicant to construct and operate the facilities proposed and to sell and deliver natural gas in the amounts and for the purposes as hereinbefore stated, all as more fully described in the application.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Rules and Regulations of the Commission under the Natural Gas Act and particularly the terms and conditions of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP63-52

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 8, 1963)

On August 31, 1962, as supplemented on September 17, 1962, United Gas Pipe Line Company (Applicant) filed in Docket No. CP63-52 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities for the delivery of additional supplies of natural gas to existing customers, the City of Picayune, Mississippi, and United Gas Corporation, for resale and distribution in Picayune and Nicholson, Mississippi, respectively, all as more fully set forth in the application as supplemented.

Applicant seeks authorization to construct and operate approximately 0.04 mile of 4-inch tie-over pipeline beginning at a point on Applicant's 30-inch South

Louisiana-to-Mobile Junction main line and extending to the existing 4-inch Picayune lateral presently connected to Applicant's 16-inch Lirette-to-Mobile Junction main line, all in Hancock County, Mississippi.

The subject facilities are estimated to cost $15,090, to be financed from current working funds.

The additional volumes of gas are necessary due to the anticipated increase in population as a result of the proposed National Aeronautics and Space Administration test facilities whose location in the area has been announced. Any additional gas delivered through the subject facilities will be sold in accordance with Applicant's filed FPC Gas Tariff.

No question of gas supply is involved herein.

On October 12, 1962, the Commission issued a temporary certificate for the construction and operation of the subject facilities.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 29, 1963, respecting the matters involved in and the issues presented by the application, as supplemented, herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 20, 1942, in Docket No. G-216 (3 FPC 3).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, United Gas Pipe Line Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNITED GAS PIPE LINE COMPANY, DOCKET NOS. CP63-124 AND CP63-125

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 8, 1963)

On November 6, 1962, United Gas Pipe Line Company (Applicant) filed in Docket No. CP63-125 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval of the Commission to abandon two 300 hp compressor units at the Dallas Junction Compressor Station in Dallas County, Texas, all as more fully set forth in the application which is on file with the Commission.

On November 6, 1962, Applicant filed in Docket No. CP63-124 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a compressor station using the facilities proposed to be abandoned in Docket No. CP63-125, and facilities for the enlargement of a meter station in Baldwin and Escambia Counties, Alabama, respectively, all as more fully set forth in the application in Docket No. CP63-124 which is on file with the Commission.

The application in Docket No. CP63-125 states that the Dallas Junction Compressor Station has been affected by the decline in deliveries to the Dallas-Fort Worth area to the extent that it does not appear likely that the compressor units will be needed in their present location in the foreseeable future.

The original cost of the facilities proposed to be removed was $69,438.96; the depreciated cost of the facilities at the time of filing the abandonment application was $40,533.74; and Applicant estimates the salvage value to be $57,086, less the cost of removal, $8,230. The cost of establishment of the new compressor station is estimated at $309,966, and the cost of enlargement of the metering facilities is estimated at $16,167, all to be financed from current working funds.

Applicant proposes to construct and operate a compressor station near Milepost 0.0 on Applicant's existing 8-inch Container Corporation of America lateral line in Baldwin County, Alabama, consisting of two 330 hp natural gas engine driven reciprocating compressors. Applicant also proposes to install high compression heads on the units removed from the Dallas Junction Compressor Station in order to up-rate each unit from 300 hp to 330 hp.

In addition to the construction and operation of the compressor station, Applicant also proposes to enlarge the existing Container Corporation of America meter station in Escambia County, Alabama. Applicant has entered into an agreement with Container Corporation of America dated July 2, 1962, under which the maximum daily delivery obligation is increased to 7,500 Mcf of gas until July 1, 1963, and then to 16,000 Mcf of gas. The increased deliv-

eries should have no substantial effect on Applicant's ability to meet its other existing obligations.

Pursuant to due notice, a public hearing was held in Washington, D.C., on January 30, 1963, respecting the matters involved in and the issues presented by the applications herein. No petitions to intervene or protests to the granting of the applications have been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The facilities proposed to be abandoned as hereinbefore described, all as more fully described in the application in Docket No. CP63-125, are subject to the jurisdiction of the Commission, and the abandonment of said facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonment by Applicant as hereinbefore described is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

(4) The facilities proposed to be constructed and operated by Applicant as hereinbefore described, all as more fully described in the application in Docket No. CP63-124, are to be used in the transportation and delivery of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Applicant is able and willing properly to do the acts and to perform the service proposed in Docket No. CP63-124 and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(6) The construction and operation of the facilities proposed in Docket No. CP63-124 by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant, United Gas Pipe Line Company, of the facilities hereinbefore described, all as more fully described in the application in Docket No. CP63-125, be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of the subject abandonment within 10 days of the date thereof.

(C) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in Docket No. CP63–124, upon the terms and conditions of this order.

(D) The certificate issued by paragraph (C) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(E) The facilities hereby authorized in paragraph (C) above shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within four months from the date on which this order issues.

(F) The accounting for this transfer shall be in accordance with the Commission's Uniform System of Accounts prescribed for Natural Gas Companies.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

HUNT OIL COMPANY, DOCKET NO. RI63–128; SUN OIL COMPANY, DOCKET NO. RI63–129

ORDER SEVERING PROCEEDING, WAIVING AND OMITTING THE INTERMEDIATE DECISION IN ONE PROCEEDING, CONFIRMING DATES FOR THE FILING OF BRIEFS AND GRANTING CONTINUANCE

(Issued February 11, 1963)

On January 24, 1963, the presiding examiner in the above-entitled proceedings certified to the Commission two motions relating to the procedural aspects of these consolidated proceedings.

The first motion involves the *Hunt Oil Company* case, Docket No. RI63–128, wherein the staff requested that a continuance until March 18, 1963 be granted for the preparation and service of the direct presentations of the staff and interveners, and that the hearing in the *Hunt* case be reconvened on April 1, 1963 for cross-examination of the presentations.

Counsel for Hunt Oil Company (Hunt) objected to a continuance in excess of thirty days for the preparation of direct cases stating that Hunt waived its statutory right to put the increased rate in effect for a period of two months in order to obtain an extension of three weeks to file its direct case, and asked to have its waiver set aside if staff received such continuance. The extension of time proposed by Hunt for putting the increased rate in effect when it requested an extension of time for presenting its direct case is not relevant to the instant request made by staff, and the time granted staff and interveners does not affect the time at which Hunt may place its increased rate in effect. Staff's request and the reasons advanced therefor were considered sufficient by the presiding examiner and are considered sufficient by us.

The second motion relates to the procedural aspects of the *Sun Oil Company* case, Docket No. RI63–129. At the conclusion of cross-examination of Sun's direct presentatiion, staff and the participating interveners rested. Thereupon, staff moved with the agreement of all counsel that the *Sun* proceeding be severed from the *Hunt Oil Company* proceeding, Docket No. RI63–128; that the intermedi-

ate decision procedure be waived and omitted with respect to the *Sun* proceeding; and that dates for the filing of briefs in the *Sun* case be set as follows: the initial brief of Sun Oil Company be filed on February 25, 1963, the staff's and intervener's briefs be filed on March 18, 1963, and Sun's reply brief be filed on March 28, 1963. Inasmuch as the *Hunt* and *Sun* proceedings were originally consolidated to expedite the hearing process, consonant action warrants granting this motion.

The Commission orders:

(A) Staff, and the interveners if they so desire, shall file with the Commission and serve on the parties and the staff, as applicable, their cases-in-chief in the *Hunt Oil Company* proceeding, Docket No. RI63–128, on or before March 18, 1963, and the hearing in such proceeding shall reconvene at 10:00 a.m., April 1, 1963, in a hearing room of the Commission at 441 G. St., N.W., Washington, D.C.

(B) The *Sun Oil Company* proceeding in Docket No. RI63–129 is hereby severed from the *Hunt Oil Company* proceeding in Docket No. RI63–128, intermediate decision is waived and shall be omitted in the said *Sun* proceeding, and the dates established for the filing of briefs in the *Sun* proceeding are confirmed. Commissioners Morgan and Ross *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

CITY OF TEMPLE, GEORGIA, DOCKET NO. CP63–122

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued February 11, 1963)

On November 5, 1962, as supplemented on November 26, 1962, the City of Temple, Georgia (Applicant), filed in Docket No. CP63–122 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Southern Natural Gas Company (Respondent) to establish physical connection of its facilities with the facilities which Applicant proposes to construct and operate and to sell and deliver natural gas to Applicant for resale and distribution in said City and environs, all as more fully set forth in the application.

Respondent's pipeline passes within 6.7 miles of the City of Temple, and Applicant proposes to construct the necessary connecting line to receive gas from Respondent's facilities. Applicant also proposes to construct and operate a gas distribution system in the City of Temple. The facilities which Applicant proposes to construct are estimated to cost $231,000, which Applicant proposes to finance from a revenue bond issue of $128,000, and a grant of $103,000 from the Housing and Home Finance Agency under the Accelerated Public Works Program.

The estimated natural gas requirements in Mcf for the City of Temple are as follows:

	1st year	2d year	3d year
Annual	16,598	21,289	26,330
Peak day	188	233	280

On December 5, 1962, Respondent filed its answer to the subject application and stated that it consents to the granting of the application provided that the Commission determines that Applicant's proposed project is feasible.

Notice of the filing of the application was issued on January 7, 1963, and published in the Federal Register on January 11, 1963 (28 F.R. 336). No protest, request for hearing, or petition to intervene has been received.

The Commission finds:

(1) Applicant, the City of Temple, Georgia, is a municipal corporation organized and existing under the laws of the State of Georgia, and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in Temple and environs.

(2) Respondent, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G–296 (3 FPC 822).

(3) It is necessary and desirable in the public interest to direct Southern Natural Gas Company to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant as hereinbefore described, all as more fully described in the application in this proceeding, and to sell and deliver to Applicant up to 280 Mcf of natural gas per day for resale in the City of Temple, Georgia, and environs, as hereinafter ordered.

(4) Applicant should commence taking natural gas from Respondent within one year from the date of issuance of this order.

The Commission orders:

(A) Southern Natural Gas Company be and it is hereby directed to establish physical connection of its transmission facilities with the facilities proposed to be constructed by Applicant as hereinbefore described, together with such metering, regulating, and appurtenant facilities as may be required therefor, and to deliver and sell up to 280 Mcf of natural gas per day to Applicant pursuant to Respondent's appropriate rate schedules on file with the Commission, provided that Applicant shall commence the purchase of gas as proposed herein within one year from the date on which this order issues.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

TRUNKLINE GAS COMPANY, DOCKET NO. G–20108

FINDINGS AND ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 11, 1963)

On December 17, 1962, Trunkline Gas Company (Trunkline) filed a motion for an extension of time within which to complete certain of the experimental operations authorized in Docket No. G–20108. By Commission order, issued February 23, 1960, 23 FPC 435, in this proceeding, Trunkline was authorized, among other things, to install and operate, on an experimental basis, two gas turbine-driven compressor units at its compressor Station No. 31. Such authorization to operate the test units was for a period of one year from the date of completion of construction. Construction was completed on February 28,

1961. On February 6, 1962, the Commission extended the authorization to August 15, 1962, and on August 15, 1962, the authorization was further extended to December 13, 1962.

In the subject motion Trunkline states that testing on the larger of the two compressor units was successfully completed, but that further testing of the smaller 850 horsepower compressor is desirable. Therefore, Trunkline requests a further extension of time to and including July 1, 1963, for the testing of the 850 horsepower unit.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued February 23, 1960, in Docket No. G–20108 be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued February 23, 1960, in Docket No. G–20108 be and the same is hereby further amended to authorize the operation by Trunkline Gas Company of the 850 horsepower compressor unit for the purpose of testing to and including July 1, 1963, all is hereinbefore described and as set forth in the subject motion.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP60–36; GULF OIL CORPORATION, DOCKET NO. CI60–43; TIDEWATER OIL COMPANY, DOCKET NO. CI60–142

ORDER DENYING PETITIONS FOR ISSUANCE OF ORDERS GRANTING CERTIFICATES IN ACCORDANCE WITH APPLICATIONS AS MODIFIED BY OFFERS OF SETTLEMENT, AND GRANTING A FURTHER EXTENSION OF TIME

(Issued February 11, 1963)

These consolidated proceedings concern applications for certificates of public convenience and necessity filed by Gulf Oil Corporation (Gulf) and by Tidewater Oil Company (Tidewater) to sell and deliver natural gas to United Gas Pipe Line Company (United) and by United to purchase such gas, and to construct and operate such facilities to enable it so to do. Hearings on such applications began on January 4, 1961, and were concluded on October 19, 1961. Thereafter, on October 18, 1962, the presiding examiner issued an initial decision.

Following the conclusion of the hearings, the parties to these proceedings entered into a series of conferences for the purpose of attempting to settle the matters and issues concerned. As a result of such conferences, Gulf, on January 3, 1963, filed its petition for issuance of an order granting it a permanent certificate of public convenience and necessity in accordance with its application as modified by an attached offer of settlement. On January 4, 1963, Tidewater filed its petition and offer of settlement identical in form and substance with Gulf's. Additionally, Tidewater requested a further extension of time within which to file exceptions to the examiner's decision.[1]

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[1] On January 3, 1963, a notice of further extension of time was issued granting all parties to and including February 15, 1963, within which to file exceptions to the initial decision herein.

In summary the offers of settlement provide:

(1) The rate to be paid by United for gas received by it from the date of initial delivery (June 22, 1962) to June 30, 1967, would be 20.625¢ per Mcf, inclusive of tax reimbursement;

(2) Extension of the make-up period for gas not taken in accordance with the contract in any calendar year, from one to four years;

(3) Refunds to United of two-thirds of the difference between the amount per Mcf actually collected for gas delivered and the settlement rate, with interest at seven per cent.

On January 28, 1963, Memphis Light, Gas and Water Division of the City of Memphis, Tennessee, and Mississippi Valley Gas Company (hereafter jointly styled "Memphis") intervenors in these proceedings, filed a joint opposition to the petitions and offers filed by Gulf and Tidewater, and to Tidewater's request for a further extension of time.

On February 4, 1963, Philadelphia Electric Company (Philadelphia) filed its response to said petitions and offers. Philadelphia states that the proposed settlement price is not required by the public convenience and necessity.

In view of the joint opposition filed by Memphis we find that we cannot accept the offers filed by Gulf and Tidewater, nor grant the petitions for issuance of permanent certificates as modified by said offers. We shall, however, grant Tidewater's request for a further extension of time within which to file exceptions to the examiner's initial decision.

The Commission finds:

(1) The petitions filed by Gulf on January 3, 1963 and by Tidewater on January 4, 1963, for issuance of an order in these consolidated proceedings granting each a permanent certificate of public convenience and necessity in accordance with their respective applications as modified by their offers of settlement must be denied, and said offers cannot be accepted.

(2) Good cause exists for granting all parties to these proceedings a further extension of time to file exceptions to the initial decision issued herein on October 18, 1962.

The Commission orders:

(A) The petition filed herein by Gulf on January 3, 1963, and by Tidewater on January 4, 1963, hereinabove described are denied.

(B) A further extension of time is hereby granted to and including March 4, 1963, within which all parties may file exceptions to the initial decision issued in these proceedings on October 18, 1962.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

BLACK HILLS POWER & LIGHT COMPANY, DOCKET NO. E-7077

ORDER AUTHORIZING ISSUANCE OF COMMON STOCK

(Issued February 13, 1963)

Black Hills Power & Light Company (Applicant), incorporated under the laws of the State of South Dakota and qualified to do business as a foreign corporation in the State of Wyoming, with its principal place of business at Rapid City, South Dakota, filed an application on January 11, 1963 as amended on January 31 and February 13, 1963, for an order, pursuant to Section 204 of the

Federal Power Act, authorizing it to issue and sell 21,391 shares of Common Stock, par value $1.00 per share.

The proposed shares of Common Stock will be offered to the holders of Applicant's presently outstanding Common Stock pursuant to preemptive rights. The stockholders of Applicant entitled to subscribe to the proposed issuance will be those of record at the close of business on February 13, 1963, or on such later date as shall be the business day immediately preceding the day on which the Registration Statement relative to the proposed issuance will become effective under the Securities Act of 1933. The shares will be offered to the stockholders of Applicant at a price of $45.50 per share and at the rate of one share for each 20 shares held of record. Rights to subscribe will be evidenced by transferable subscription warrants carrying an oversubscription privilege.

The application indicates that the offering will not be underwritten, however, Applicant proposes to enter into an agreement with Eastman Dillon, Union Securities & Co. (Dealer-Manager) to perform certain services in connection with the proposed issuance including the solicitation of subscriptions and the formation of a group of approved dealers to assist in such solicitation. For its services, Applicant proposes to pay the Dealer-Manager $1,500.00, plus an amount equal to 40 cents per share for each share of the stock offering issued through the efforts of such dealers including the Dealer-Manager. The proposed agreement with the Dealer-Manager also contemplates purchases of the Applicant's common stock and warrants during the subscription period and the exercise of such warrants to stablize the price of such securities during said period. For this service, Applicant proposes to pay an amount equal to 80 cents per share for each share (not to exceed 3,000 shares) acquired by the Dealer-Manager upon exercise of such rights. Applicant also proposes to pay Dealer-Manager its out-of-pocket expenses in connection with services reflected above not to exceed $6,000.00.

Gross proceeds from the stock issuance is estimated at $973,290. Applicant proposes to utilize the proceeds from the issuance and sale of the Common Stock for additions and improvements to its properties and reduction of bank loans heretofore obtained for such purpose. Expenditures for such additions and improvements during the fiscal year ending October 31, 1963, are presently estimated at approximately $3,398,100, including $1,594,000 for a portion of the cost of a 161 kv transmission line and appurtenant terminal facilities (total cost $2,294,000) from Rapid City, South Dakota through Hot Springs to the Nebraska boundary to interconnect with a similar line to be constructed by Consumers Public Power District of Nebraska-Western Division. The construction program also includes a proposed expenditure of $215,000 for a 69 kv transmission line between Osage and Newcastle, Wyoming and $1,375,600 for additional distribution plant. The Commission, on November 15, 1962, authorized the issuance of $995,000 principal amount of First Mortgage Bonds, Series M, 4¾%, due 1992, by Applicant, as a part of financing this construction program (Docket No. E-7066). Applicant estimates that in addition to the proceeds from the sale of Common Stock, plus the proceeds from the sale of the Series M First Mortgage Bonds and available funds on hand together with cash which will become available from operations, approximately $800,000 of additional funds will be needed to cover the remaining cost of its fiscal year 1963 construction program and to repay interim bank loans obtained in connection with such program. Applicant expects to sell additional securities as needed and as market conditions warrant to finance its construction program, however, Applicant has an established line of credit sufficient to permit it to complete its 1963 construction program if necessary.

Written notice of the application has been given to the Wyoming Public Service Commission and the South Dakota Public Utilities Commission, and to the Governor of each of those States. Notice of the application also was published in the Federal Register on January 30, 1963 (28 F.R. 878), stating that any person desiring to be heard or to make any protest with reference to the application shall file a petition or protest on or before February 8, 1963, with the Federal Power Commission, Washington 25, D.C. No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued January 21, 1959. [*In the Matter of Black Hills Power & Light Company*, Docket No. E-6857, 21 FPC 43.]

(2) The proposed issuance and sale of Common Stock, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act; and the proposed issuance of Common Stock is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance of Common Stock is exempted by the provisions of Section 24.1a(a) (1) and (3) of the Commission's Regulations under the Federal Power Act from the requirements of competitive bidding.

(5) There is no affiliation, direct or indirect, through directors, officers, or stockholders, or the ownership of securities, or otherwise, between Applicant and the Dealer-Manager.

(6) The fees proposed to be paid to the Dealer-Manager in connection with the proposed issuance of Common Stock by Applicant do not appear to be unreasonable.

(7) The proposed issuance and sale of Common Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance and sale of Common Stock, as described above, upon the terms and conditions, and for the purposes specified in the application, as amended, are hereby authorized, subject to the provisions of this order.

(B) This authorization shall expire unless the transactions hereby authorized are consummated within 90 days from the date of issuance of this order.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

EAST TENNESSEE NATURAL GAS COMPANY, DOCKET NO. CP61-199

ORDER ADOPTING INITIAL DECISION OF PRESIDING EXAMINER

(Issued February 14, 1963)*

Syllabus

1. Commission *issues* certificate of public convenience and necessity, under Section 7, of the Natural Gas Act, authorizing increased sales of gas to existing customer and initial sale to new market in Tennessee. PP. 297; 307.

A. J. Beckstrand, Thomas B. Taylor, Jr., Lambert McAllister and *Francis J. Walsh* for East Tennessee Natural Gas Company.

H. D. Erwin for Unicoi County Utility District and Volunteer Natural Gas Company.

James A. Gammon for Fuels Research Council, Inc., National Coal Association, and United Mine Workers of America.

David B. Ward for Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

By initial decision issued January 18, 1963, the presiding examiner in the above-entitled proceeding issued a certificate of public convenience and necessity to East Tennessee Natural Gas Company.

The time for filing exceptions to said decision has passed and no exceptions having been filed, the matter is now properly before us.

The Commission orders:

The initial decision of the presiding examiner issued on January 18, 1963, is adopted as the decision of the Commission in this proceeding effective as of the date of issuance of this order.

INITIAL DECISION

UPON APPLICATION TO CERTIFICATE NATURAL GAS FOR VOLUNTEER AND UNICOI, TENNESSEE

(Issued July 30, 1962)

LANDE, *Presiding Examiner:* This is a certificate proceeding under Section 7(c) of the Natural Gas Act in which East Tennessee Natural Gas Company (or applicant) requests authority to construct and operate approximately 14.5 miles of 6-inch lateral pipeline and appurtenant facilities for the purpose of selling and delivering additional natural gas to an existing customer, Volunteer Natural Gas Company (Volunteer) for resale in Johnson City, Tennessee, and the initial gas requirements of Unicoi County Utility District (District or Unicoi) for resale in and near the towns of Unicoi and Erwin, Unicoi County, Tennessee. East Tennessee's original application which was filed with the Commission on January 24, 1961, was supplemented on July 7 and August 18, 1961.

By order issued April 30, 1962, the Commission permitted Fuels Research Council, Inc., National Coal Association, and United Mine Workers of America (or Interveners), to intervene in this proceeding.

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*Supplemental decision appears on p. 303.

A hearing on the application commenced as scheduled on May 23, 1962, and lasted three days. East Tennessee presented seven witnesses in support of its application.

Neither Staff nor the Interveners presented any evidence, but both conducted extensive cross-examination of the witnesses presented by East Tennessee, and they also filed briefs. Applicant filed an initial brief and a reply brief.

Position of Staff Counsel

East Tennessee's application covers additional service to Volunteer and new service to the Unicoi District project. Since applicant does not consider the possibility of serving the Volunteer project or the Unicoi District project alone it is imperative that the evidence support the application for both projects. Granted that applicant justified the proposed service to the Volunteer project and that East Tennessee is able and willing to finance such expansion, applicant's application for a certificate under Section 7(c) of the Act cannot be approved at this time because of failure to properly demonstrate economic justification. It is Staff counsel's position that the application should be denied at this time but that East Tennessee be allowed to present at some subsequent date proper showing of economic feasibility of the proposed Unicoi project.

Position of Interveners

Fuels Research Council, Inc., National Coal Association, and United Mine Workers of America have filed a joint petition alleging that the proposed sale and delivery of natural gas could cause the replacement of coal produced and transported by members of their organizations thereby depriving them of revenue and wages. The Interveners further alleged that the projects contemplated by the application may be economically and financially infeasible, unsupported by an adequate gas supply and otherwise inimical to the public convenience and necessity. Interveners contend that applicant's engineering report underlying the District's natural gas project is "inconsistent, unreasonable, unsound and thoroughly unreliable." Interveners insist that the record lacks concrete showing that the estimated large numbers of residential customers will attach to the District's gas system. The Interveners allege improbabilities and inconsistencies relating to estimated commercial attachments. Interveners further contend that the record will not support a finding of at least 1.5 times coverage on the District's proposed revenue bonds. Interveners claim that East Tennessee has failed to prove the requisite feasibility of initial natural gas service in the Unicoi County Utility District in Tennessee.

Position of Applicant

On July 13, 1962, East Tennessee replied to the briefs and statements of position of the Interveners and Staff counsel. Applicant summarized its position as follows:

The balancing and strengthening of Volunteer's Johnson City distribution system would reduce the per unit costs of distribution and increase its earning power. This, in turn, would enable Volunteer to conduct further expansion and serve still more consumers who are presently without natural gas. The second delivery point, which East Tennessee's proposed facilities would provide, would afford Volunteer and its customers the security of an alternate supply point in the event of any emergency conditions affecting gas deliveries on either side of Johnson City.

Deliveries of natural gas to Unicoi would introduce such service to the people of an area heretofore entirely without its numerous advantages. Unicoi's service area would be able to compete in attracting industries on an equal basis

with other areas which boast the availability of natural gas. Unicoi County is a "distressed" area. The industrial interruptible load provided by these projects would help East Tennessee to offset the probable loss of the interruptible sales to the Atomic Energy Commission at Oak Ridge, Tennessee.

The Volunteer Project

East Tennessee applied for additional service to Volunteer and for new service to the Unicoi District project in Tennessee. The application appears indivisible in character, as one is not feasible without the other.

East Tennessee estimates that the cost of this expansion will be $381,010. The facilities consist of 14.5 miles of 6-inch pipeline and two metering and regulating stations. East Tennessee does not operate any compressors on its system. With the addition of the above-described facilities and an increase in its maximum purchase demand of 1,685 Mcf over what it would be without this new project, East Tennessee maintains that it will be able to make the estimated third-year peak day deliveries of 2,170 Mcf to Volunteer and the Unicoi District.

East Tennessee purchases its entire gas supply from Tennessee Gas Transmission Company under a gas sales contract which provides for deliveries of up to 199,958 Mcf per day (at 15.025 psia). East Tennessee estimates its 1965 over-all system peak day requirements at 165,864 Mcf per day, including the proposed service, and estimates that approximately 10,000 Mcf per day of its 1965 peak day requirements will be met by withdrawals from line pack in accordance with East Tennessee's usual mode of operation.

In view of the additional gas available from Tennessee and its ability to withdraw from line pack, it appears that East Tennessee's system capacity and gas supply would be adequate to deliver the proposed additional volumes without impairing its ability to maintain proper service to its existing customers.

The additional interruptible service proposed would tend to offset the loss of interruptible sales on its system due to the decrease intakes by the Atomic Energy Commission at Oak Ridge Plant in Tennessee. East Tennessee proposes to finance its proposed project from general funds. The Staff does not question East Tennessee's ability to finance its expansion.

In view of the *de minimus* volume of gas involved in the proposed additional sale to Volunteer (165 Mcf on a peak day, third year) and Volunteer's sales experience in the Johnson City area, it is not necessary to go into Volunteer's proposed expansion in detail. The proposed rate of attachment of residential and commercial customers appears reasonable in view of the proven ability of Volunteer to develop a market in Johnson City. It is noted that the Staff does not question Volunteer's ability to finance the project as proposed. However, the Unicoi project is the remaining crucial issue in this proceeding.

Economic Feasibility of the Unicoi Project

The area which Unicoi proposes to serve is in and near Erwin and Unicoi, Tennessee. Heavy unemployment occurred in this area in 1955 when the Southern Pottery Plant was shut down under the weight of competition, resulting in the loss of over 1,000 jobs. In order to compete with other areas having natural gas, the community leaders there formed a utility district for the purpose of bringing natural gas into the area. Unicoi retained Porter, Barry & Associates, Consulting Engineers, to prepare an engineering study of its franchised service area and to design its natural gas distribution system. The study (Exhibit 13), prepared under the supervision of Mr. Barry, suggests the feasibility of a natural gas distribution system within the proposed service area, *viz.* the towns of Erwin and Unicoi and adjacent areas. The population of Unicoi's proposed

service area, as shown in the study, is estimated to be 9,000. There were 1,955 houses adjacent to the proposed distribution system.

The cost of constructing Unicoi's distribution system proper is $760,000 which is attributable principally to some 328,800 feet of 1-inch to 6-inch pipe. Unicoi has entered into an agreement with Southern Bond Company, subject to the issuance of the necessary authorization by the Commission, whereby Southern Bond would purchase the gas revenue bonds. The par value of these bonds is $1,155,000, which would be discounted to Southern Bond at 90 percent.

Based on estimates for a construction contract, and the financing agreement, Unicoi claims a 1.54 debt coverage ratio based on a third-year cutoff and a thirty-year bond issue (Exhibit 13, table 15A).

The economic feasibility of the proposed Unicoi project was presented by Witness Barry. After reading this witness' testimony and listening to his answers under oath to the many questions posed by the parties, the Examiner places complete confidence in Mr. Barry's professional qualification and personal integrity. However, the aggregate of his answers leads to the finding that Mr. Barry's conclusions about the economic feasibility of the Unicoi project are not supported with facts of record.

Mr. Barry stated that approximately 50 percent of the space heating residential and small commercial customers shown on Table 6 of Exhibit 13 would use gas for base load; but the basis for his estimate is not in the record. Approximately 100 of these "potential customers" were contacted; but none were asked whether they desired gas service or not. These 100 of the total potential of 1955 were simply asked what fuel they were using and what it cost. If the record showed that a substantial number of "potential customers" had been shown cost comparisons, based on proposed rates which induced them to make an indication of interest toward natural gas, we could look more favorably on the estimates of attachments. However, the record does not so show; but it does show that all of the "potential customers" are now being served with electricity for some purposes (Tr. 433) and based on Witness Barry's own cost comparison, page 2, Schedule B, Exhibit 13, electricity is substantially cheaper than gas for hot water heating and cooking in this area. Since only 100 people were contacted we have no way of knowing from what fuel the witness expects to convert these people to natural gas. Insofar as base load is concerned the only estimate (given from the witness stand and apparently from memory) is not convincing. He stated that a much higher percentage than 5 percent (the estimate given for space heating conversions from butane) of the base-load customers will come from butane, yet the Census for Housing for Tennessee shows that less than 1.5 percent of the cooking fuel market in the whole of Unicoi County uses "Bottled, Tank or L.P. gas" for cooking and still less use it for water heating. From the above discussion of the base-load estimates and their importance in this case it can only be concluded that the economic feasibility of the project is highly doubtful.

Applicant's witness failed to give a satisfactory answer to the Staff's questions about the estimates for the residential and small commercial heating load. If we were to assume, as Witness Barry does, that half of his estimated small commercial and residential customers would also use gas for base load, an error of less than 3 percent in the estimate of heating attachments for this class would result in a debt coverage of less than the required 1.5. It is imperative, therefore, that these estimates have a firm foundation in the record. Such, however, is not the case.

Witness Barry begins with 1955 residents and small commercial establishments as his total potential for this class. He arrives at this figure by counting

all residences and small commercial establishments in close proximity to his proposed line. He then states that based on his past experience 42 percent of these will be attached in the first year, 54 percent by the end of the second year and 59 percent at the end of the third year (Tr. 363). As noted above only 100 of this total of 1955 "potential customers" were surveyed and none of these were asked if they would buy natural gas if available. We do not know what fuel is being consumed presently by these "potential customers" but we do know that the witness' own comparative fuel study (page 2, Schedule B, Exhibit 13) shows that it is approximately $65.71 per year cheaper for these consumers to use coal rather than natural gas for heating and $79.13 per year cheaper to use coal for heating, cooking and water heating than to use natural gas for the same purposes. Perhaps the convenience of natural gas would compensate these customers for the additional expense, but we have no way of knowing this from the record. This comparison of fuel costs between coal and natural gas is particularly significant because it is estimated that approximately ⅓ of the heating load will be made up of converts from coal (Tr. 404).

Witness Barry estimates that 45 percent of the heating load will come from fuel oil but his own comparative cost study shows that a householder that switched from fuel oil to natural gas for heating purposes would only save $7.95 per year. The Staff thinks that this is not enough incentive.

Witness Barry expects to attach to the Unicoi District system 48 medium commercial customers and 15 large commercial customers by the end of the third year of operation. He does not know the totals of these types of establishments in the area to be served. He expects us to accept his judgment without knowing anything about the facts upon which his judgment is based. These prospects were asked for their bare cost of present fuel. Of these 15 large commercials, 12 are presently using coal and of the 48 medium commercials, 32 are now using coal. To the bare cost of coal, which was less than gas in every case the witness added certain things, including "intangibles" (Tr. 397) to arrive at his opinion that these large and medium commercial establishments would convert to natural gas. Mr. Barry's survey did not show any indications of interest on the part of these "potential customers" toward natural gas.

The only positive indications of intent to purchase natural gas in the record are the three industrial interruptible contracts. Yet even these specify no quantities. It seems, therefore, that no obvious hardship would be imposed upon these industries should natural gas not be available.

In summary, all that we have in this record to support the economic feasibility of this project are conclusions of Witness Barry, but the record lacks facts upon which his conclusions were based. The record does not yet contain sufficient evidence to warrant a finding that the proposed Unicoi project is economically feasible.

Assuming that applicant's basic engineering report is reliable, the record should show that, based on a third-year leveling of sales, the debt coverage ratio on a 30-year bond issued will be 1.5. *Cf. Panhandle Eastern Pipe Line Co., et al.*, 15 FPC 1421, 1427–1429.

The Federal Power Commission is properly concerned with the economic feasibility of distribution projects proposed to be served by a party under its jurisdiction because of the adverse effects that failure of such a project (or partial failure) would have on other customers of the jurisdictional pipeline. Should certification here be granted, the failure of the distributors (Volunteer and Unicoi District) to realize their expectations of gas purchases from East Tennessee would result in idle facilities on East Tennessee's system, the cost of which would necessarily be borne by its other customers.

Further, it would be contrary to the public interest to give consumers false security that natural gas at reasonable rates will be available for the foreseeable future if that is not the case. Consumers can be expected to convert their home facilities on the basis of the initial rates of the distributing agency. Should the expected revenues of the distributor be less than expected for any reason, the rates to consumers undoubtedly would be increased. But at this later date, these consumers may not be able to readily convert back to a less expensive fuel should they desire to do so.

Accepting all of the estimates of Witness Barry and his exhibit, the debt coverage ratio would be 1.54 (Exhibit 13, Table 15A), barely over the required 1.5 discussed above. A slight error in estimating the base-load attachments will drop the coverage below 1.5. The numerical value of this 1.5 coverage factor is not decisive of and by itself, but is significant as an indicator of future financial stability, and is to be considered in conjunction with the basic factors through which it is evolved in measuring the over-all feasibility potential of a given proposed enterprise. *In re Village of Franklin, Illinois*, 17 FPC at p. 119. In *Panhandle, supra*, the Commission discussed at some length appropriate criteria for the determination of financial and economic feasibility. Debt service coverage ratios were found to be an important consideration. There is implicit in the Commission's remarks that a 30-year bond maturity schedule requires a minimum third-year coverage of 1.5 times. That coverage is not apparent here.

East Tennessee places much reliance on the testimony of Mr. Inman, the owner of the Southern Bond Company in Jackson, Mississippi. Witness Inman stated that he wanted to purchase the bonds, because he hoped to sell them at a profit. It is possible that the issuance by this Commission of a certificate of public convenience and necessity may be erroneously taken by potential purchasers of bonds as assurance of the financial soundness of the proposal. *Cf. Carolina Natural Gas Corp.*, 10 FPC 515. Testimony that a project is financeable is usually based on the assumption that the project is economically feasible. Without an economically feasible project, the prospects of successful financing are remote. *Cf. Board of Mayor and Alderman*, 21 FPC 853, 854. Furthermore, the inquiry into the economic feasibility of a project is, *inter alia*, intended to consider the potential investor. *Cf. Atlantic Seaboard Corp.*, 7 FPC 926, 929; *In re Mississippi River Fuel Corp.*, 9 FPC 198, 208.

Witness Keys, the secretary of the Unicoi County Utility District, gave convincing testimony that the region proposed to be served by natural gas is an economically depressed area. Natural gas service could be helpful because it would attract industry. He further stated that already one plant (The Storm Steel Ball Company) has moved into the area allegedly in expectation that naural gas would be available. However, the area's industrial and population growth is not yet apparent. Query, will the natural gas service effectively cure the economic maladies of the area, or will the prevailing depression undermine the economic feasibility of the project. Thus far applicants failed to supply sufficient evidence justifying a finding of economic feasibility in the distressed area of Unicoi County. The evidence of record, as it stands now, raises serious doubt that the estimated revenues will produce earnings sufficient to meet interest payments and reduce the bond debt of the Unicoi County Utility District.

In the light of that conclusion and because the application asks for certification of the Unicoi and the Volunteer projects as a unit, it is unnecessary to discuss further the question whether certification of additional natural gas service in Volunteer is warranted.

Notwithstanding applicant's failure to make an adequate showing of economic feasibility in the instant proceedings after having been afforded a chance to do so, the circumstances are such as to warrant giving them opportunity to make further showing. Under such circumstances as are here present, there is precedent for allowing applicant an opportunity to make a further showing. *Panhandle Eastern Pipe Line Co., et al.*, 15 FPC 46, 73. Given opportunity for the presentation of revised studies, applicants may be able to make a sufficient showing that the projects will be economically feasible and capable of being financed on a more conservative basis than the original presentation, which was based on a 30-year maturity schedule for the bond issues. Accordingly, the findings and conclusions herein are made without prejudice to the applicant.

FINDINGS AND CONCLUSIONS

Upon consideration of the evidence adduced and the briefs of counsel, it is found and concluded, in addition to the findings and conclusions above set out, that:

(1) Applicant, East Tennessee Natural Gas Company, a Tennessee corporation having its principal place of business in Knox County, Tennessee is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of May 3, 1949, in Docket No. G–1065 (8 FPC 836).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, were proposed to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission and the construction and operation thereof by applicant are subject to the requirements of Subsections (c) and (3) of Section 7 of the Natural Gas Act.

(3) Applicant failed to prove that the construction and operation of the proposed facilities and the proposed sale and delivery of natural gas by East Tennessee to Volunteer and Unicoi are required by the public convenience and necessity, and that a certificate therefor should be issued at this time.

(4) The application herein (as supplemented) should be denied.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission on appeal, or review by the Commission on its own motion, as provided in its Rules of Practice and Procedure, that:

The application (as supplemented) filed herein is denied, but without prejudice to the applicant.

ALLEN C. LANDE,
Presiding Examiner.

SUPPLEMENTAL DECISION

UPON APPLICATION TO CERTIFICATE NATURAL GAS FOR VOLUNTEER AND UNICOI, TENNESSEE

(Issued January 18, 1963)

LANDE, *Presiding Examiner*: This is a reopened certificate proceeding pertaining to an application under Section 7(c) of the Natural Gas Act in which East Tennessee Natural Gas Company (or Applicant) requests authority to construct and operate approximately 14.5 miles of 6-inch lateral pipeline and appurtenant facilities for the purpose of selling and delivering additional natural gas to an existing customer, Volunteer Natural Gas Company (Volunteer)

for resale in Johnson City, Tennessee, and the initial gas requirements of Unicoi County Utility District (District or Unicoi) for resale in and near the towns of Unicoi and Erwin, Unicoi County, Tennessee. East Tennessee's original application which was filed with the Commission on January 24, 1961, was supplemented on July 7 and August 18, 1961.

By order issued April 30, 1962, the Commission permitted Fuels Research Council, Inc., National Coal Association, and United Mine Workers of America (or Interveners), to intervene in this proceeding. The initial hearing on the application commenced as scheduled on May 23, 1962, and lasted three days. East Tennessee presented seven witnesses in support of its application. Neither Staff nor the Interveners presented any evidence, but both conducted extensive cross-examination of the witnesses presented by East Tennessee, and they also filed briefs. Applicant filed an initial brief and a reply brief.

The first decision of the Presiding Examiner in this proceeding denying the certificate of public convenience and necessity sought pursuant to Section 7 of the Natural Gas Act was issued July 30, 1962. The facts and findings, more fully described in said first decision, are that East Tennessee fully justified the proposed service to the Volunteer project and that applicant is able and willing to finance this part of the proposed expansion. However, since applicant did not consider it desirable to serve either the Volunteer project or the Unicoi District project separately, it is essential that the evidence in the instant proceedings support the application for both projects as a proposed joint expansion. The Examiner concluded that the engineering report and supporting testimony initially submitted by the Unicoi County Utility District was deficient in that the conclusions about the economic feasibility of the Unicoi project were not supported with facts of record. Accordingly, the application was denied but without prejudice to the applicant. The Examiner was of the opinion that the applicant should be given an opportunity to remedy the factual deficiencies in the record.

On August 22, 1962, East Tennessee Natural Gas Company filed with the Commission a petition to reopen the record for the purpose of submitting additional economic feasibility data and testimony. By Order of the Commission issued August 30, 1962, this petition was denied on the grounds that sufficient facts had not been submitted warranting reopening.

On October 10, 1962, applicant again filed a petition to reopen this proceeding. Attached to this petition was a revised engineering study and further proposed testimony. Applicant submitted that this new evidence will cure the deficiencies which the Examiner outlined in his decision.

No objection to the granting of the petition has been filed.

The Commission, in accordance with Section 1.33 of the Rules of Practice and Procedure, reopened this proceeding and remanded the case to the Presiding Examiner for further hearing to permit the applicant to present additional evidence in the proceeding with opportunity for cross-examination and presentation of evidence afforded to other parties to the proceeding.

The hearing on remand was held as duly scheduled on December 10, 1962. East Tennessee presented new evidence sponsored by witnesses Barry and Cantrell. The Staff conducted extensive cross-examination of East Tennessee's witnesses and evidence. It is noted that the Interveners were not present during the remand phase of the hearing (Tr. 462). East Tennessee filed its initial brief on December 21, 1962. Neither Staff nor the Interveners presented any evidence during this remand phase of the proceeding.

On January 4, 1963, the Staff filed a memorandum brief, taking the position that the revised engineering report of the Unicoi District, and the further testimony concerning it, cure the deficiencies in the original record of this proceeding.

The Staff recommended that the application of East Tennessee Natural Gas Company in this proceeding should be granted.

On January 14, 1963, East Tennessee Natural Gas Company filed a belated motion for omission of intermediate decision procedure. Pursuant to Section 1.30(c)(3) of the Commission's Rules of Practice such a motion should have been filed "not later than five days" after the conclusion of the hearing on December 10, 1962. Applicant urges that an exception be made in this case in order to expedite the proceeding. Since the examiner's supplemental decision is already completed the new motion can only delay finalization of the proceeding. Furthermore, the Interveners thus far did not formally withdraw from this docket and, therefore, it is more orderly to proceed with the issuance of a supplemental decision herein.

The Prior Evidence

In the initial decision issued in this matter on July 30, 1962, the Presiding Examiner recommended denial of East Tenessee's application because the Examiner was of the opinion that the engineering report and supporting testimony submitted by Unicoi was deficient in that the conclusions about the economic feasibility of the Unicoi Project were not supported with facts of record. Specifically the Examiner was of the opinion that there was no firm foundation in the record for the estimate of Unicoi's engineering witness, Mr. Simmons J. Barry, of the number of customers within the Unicoi County Utility District who would convert from other fuels to gas nor for his estimate of gas usage by such potential customers. In his decision the Examiner was also of the opinion that there was no support in the record for Witness Barry's conclusion that 59 percent of the potential residential and small commercial customers would use gas at the end of the third year for space heating and that one-half of such space heating customers would also use gas for cooking and water heating; that the record failed to show whether the potential customers were asked directly if they desired gas service; that the record failed to show that the potential customers had been advised as to the comparative costs between gas and other fuels; that the record did not show the present fuel of customers assumed to be converting to gas; that there was no basis shown in the record that having gas available would justify the incurrence of the cost of converting from coal to gas; that the small saving to be realized by a switch from fuel oil to gas was insufficient, without more incentive, to justify the conclusion that those heating with oil would convert to gas; and finally, that there was no justification in the record for the stated revenues assumed to be generated for debt coverage of 1.54 on the basis of the estimated sales for the third year of operation.

The New Evidence

Unicoi conducted a completely new customer survey along the principles laid down by the Commission in *Village of Franklin, Illinois, et al.*, Docket No. G–8471, *et al.*, 17 FPC 118. This new survey (Exhibit No. 14) was completed in September 1962. The facts and figures shown in this new survey demonstrate that (1) the proposed project of Unicoi is now economically feasible and (2) East Tennessee's proposal to serve Unicoi is now economically feasible. In fact the present record shows a debt ratio coverage of 1.72 on the basis of a 30-year operating period as opposed to the debt ratio coverage of 1.54 as originally shown in the initial proceedings in this matter.

Public Convenience and Necessity

The relevant and uncontroverted evidentiary matter adduced during the reopened hearing, which is outlined below, demonstrates that East Tennessee's

proposed service to Unicoi County Utility is now economically feasible and that therefore the issuance of a certificate for both, the proposed initial service to Unicoi and the additional service to Volunteer, is now required by the public convenience and necessity. In other words, applicant has now fully remedied the initial deficiencies in the record.

Applicant showed that all potential medium and large commercial customers, as well as all industrial interruptible customers, were interviewed during the course of the September 1962 survey. The use of natural gas by these three classes of customers by the end of the third year of operation represents the volumes of gas required to convert actual present fuel use to natural gas without reflecting any increase for indicated future increase in fuel usage. The record establishes that the above estimates of sales are reasonable and that the gross revenue for the third year of operation in the amount of $348,298 can be attained.

By actual count as of September 1962 there are 2,487 occupied residences and operating small commercial establishments adjacent to the projected Unicoi distribution system. Of this total 1,909 were interviewed and were shown an estimate of what the use of gas would cost as opposed to the cost of fuels they are presently using. Of those interviewed 76 percent indicated a desire for gas at the end of the third year of operation. On the basis of the evidence presented and the supporting testimony, it is reasonable to conclude that at the end of the third year of operation, of the total of 2,487 occupied residences and operating small commercial establishments located adjacent to the distribution system, 1,468 (or 59 percent) would convert to natural gas for space heating, and 249 (or 10 percent) of such customers would use gas for cooking and water heating purposes. On the basis of an annual usage of 96 Mcf for the 1,468 space heating customers and an annual usage of 30 Mcf annually for cooking and water heating the total annual sales of Unicoi to such customers at the end of the third year of operation will be 148,398 Mcf, resulting in annual revenues of $219,460.

Operating costs to Unicoi of $206,513 in the third year of operation seem reasonable. Thus, East Tennessee's proposal, including the additional service to Volunteer, should realize a rate of return of 8.44 percent or a contribution to mainline facilities of $5,943 at the end of the third year of operation. The net revenue available to Unicoi for debt coverage is $4,044,564, resulting in a debt ratio coverage of 1.72.

The new facts of record show that East Tennessee's proposed service to Unicoi will impose no burden on the other customers served by East Tennessee.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, the evidence adduced and the briefs filed in this reopened phase of these proceedings, as well as the record and briefs in the first phase thereof, the Presiding Examiner finds and concludes that:

(1) Applicant, East Tennessee Natural Gas Company, a Tennessee corporation having its principal place of business in Knox County, Tennessee, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of May 3, 1949, in Docket No. G–1065 (8 FPC 836).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale and delivery of natural gas by East Tennessee to Volunteer and Unicoi are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission, that:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing the East Tennessee Natural Gas Company to construct and operate the facilities and to sell natural gas as more fully described in the application in this proceeding.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The certificate issued in paragraph (A) shall be deemed accepted and of full force and effect, unless refused in writing and under oath by East Tennessee Natural Gas Company within thirty days of the issuance of this order.

(D) East Tennessee Natural Gas Company shall report to the Commission in writing, under oath, the date of commencement of the service to be rendered to the Unicoi County Utility District.

ALLEN C. LANDE,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. G-16235; PACIFIC NORTHWEST PIPELINE CORPORATION, DOCKET NO. G-16237; COLORADO INTERSTATE GAS COMPANY, DOCKET NO. G-16904

ORDER DENYING MOTIONS

(Issued February 14, 1963)

El Paso Natural Gas Company (El Paso) on January 22, 1963, and Colorado Interstate Gas Company (Interstate) on January 24, 1963, each filed a motion to terminate the intervention in this proceeding of Tennessee California Gas Transmission Company and California Gas Transmission Company (Tennsubs), subsidiaries of Tennessee Gas Transmission Company (Tennessee), and to reject the exceptions to the decision of the presiding examiner tendered for filing by Tennsubs.

Tennsubs and Gulf Pacific Pipeline Company (Gulf Pacific) filed on February 1, 1963, a motion to join Gulf Pacific, an affiliate of Tennsubs and a wholly owned subsidiary of Tennessee, as a party intervener in this proceeding.

El Paso and Interstate stated substantially the same grounds for their respective motions: namely that this Commission permitted Tennsubs to intervene in this proceeding on the sole basis of Tennsubs' allegation that they had: "* * * vital competitive interests which can be protected only by intervention * * *"; that those alleged competitive interests were based upon the application of Southern California Edison Company (Edison) in Docket No. CP61–172 and the applications of Tennsubs in Docket Nos. CP61–173 and CP61–174 for the construction and operation of facilities of the "Pemex" project designed to transport Texas and Mexico gas to Los Angeles for use as boiler fuel by Edison; that by order issued January 3, 1963, 29 FPC 25, the Commission permitted withdrawal of the Pemex applications; that, therefore, Tennsubs no longer have a competitive interest in this proceeding and that further participation by them is neither necessary nor in the public interest.

Tennessee has acted as agent for Edison in an attempt to secure for it a supply of natural gas. Tennsubs were the media through which the gas would have been made available to Edison. El Paso and Interstate have not filed a motion to terminate Edison's intervention in this proceeding although the withdrawal of Edison's Pemex application was effected by the same notice of withdrawal and order as was the withdrawal of Tennsubs' applications. El Paso and Interstate did not attempt to explain their differentiation in this regard.

We find, therefore, that El Paso and Interstate have not shown that Tennsubs' interest in the Rock Springs project has ceased or that their intervention is no longer in the public interest.

We find that it is neither feasible nor in the public interest to attempt to strike from the record the evidence which was adduced by Tennsubs.

Coming now to the motion of Tennsubs and Gulf Pacific Pipeline Company to join Gulf Pacific as a party intervener in this proceeding, it is alleged in the motion and in Tennsubs' answer, which is incorporated in the motion, that Gulf Pacific is a wholly owned subsidiary of Tennessee Gas Transmission Company; that it is the corporate instrument created to effect the transportation of gas for the proposed revised project; that it proposes to file a competitive bid to procure and transport gas for the Department of Water and Power of the City of Los Angeles as well as for Edison; that if admitted as an intervener, it will participate with Tennsubs and will be represented by the same counsel and will present the same arguments as Tennsubs.

Gulf Pacific has not demonstrated that its participation in this proceeding is necessary or in the public interest. Its interests are adequately represented by Tennsubs who we have determined should continue as parties to the proceeding.

El Paso and Interstate apparently misconceive the effect of the withdrawal of Tennsubs applications constituting the so-called Pemex project. The effect of the withdrawal of those applications was to place Tennessee or any subsidiary thereof filing an application in the position of any new applicant coming before the Commission with a proposal to serve gas in competition with another applicant.

The Commission further finds:

(1) El Paso Natural Gas Company and Colorado Interstate Gas Company have not shown good cause to terminate the intervention in this proceeding of Tennessee California Gas Transmission Company and California Gas Transmis-

sion Company and to reject exceptions to the decision of the presiding examiner tendered for filing by said companies.

(2) Good cause has not been shown for permitting Gulf Pacific Pipeline Company to intervene in this proceeding.

The Commission orders:

(A) The motions of El Paso Natural Gas Company and Colorado Interstate Gas Company are hereby denied.

(B) The motion of Tennessee California Gas Transmission Company, California Gas Transmission Company and Gulf Pacific Pipeline Company is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

AMENDMENT OF PART 34 OF REGULATIONS UNDER THE FEDERAL POWER ACT—PRESCRIBING THE CONTENTS OF APPLICATIONS FOR THE ISSUANCE OF SECURITIES, DOCKET NO. R-225

ORDER NO. 262*

ORDER PRESCRIBING REVISED REGULATIONS

(Issued February 14, 1963)

The Commission has under consideration in this proceeding the amendment of Part 34 of its Regulations under the Federal Power Act by revising § 34.2 thereof entitled "*Contents of application*" and § 34.3 entitled "*Required exhibits*". The sections prescribe the basic information which is to be submitted in support of applications for authorization, pursuant to section 204 of the Federal Power Act, for the issuance of securities and the assumption of liabilities.

The amendments are designed to rearrange and simplify the format in which the required information must be submitted, relegating to exhibit form certain information heretofore placed in the body of the application and reducing the number of copies of certain exhibits. The only change necessitating the submission of additional information is § 34.2(j) which requires more detailed information regarding construction programs for which funds from sale of securities may be utilized.

General public notice of the proposed rulemaking was given by publication of notice in the Federal Register, on November 15, 1962 (27 F.R. 11289), and by mailing copies thereof to interested persons, including public utilities, and to State and Federal agencies. Comments were received from three public utilities, one utility service company and one public power association.

Stone & Webster Service Corp. suggested that the information regarding construction programs and expenditures called for in § 34.2(j)(1) and (2) be submitted in exhibit form. We have adopted this suggestion and have changed these subparagraphs accordingly. Northern States Power Company commented on the map required to be filed under § 34.3 as Exhibit P and suggested that the scale of not less than 16 miles to the inch be eliminated inasmuch as such a scale would require large maps for some systems serving extensive but sparse territory. We have adopted this suggestion and have substituted the requirement that the maps shall be of sufficient scale as will show clearly the location of the

*Published in the Federal Register on February 19, 1963, 28 F.R. 1538.

proposed additions and improvements of generating, transmission and major substation facilities for which the securities are to be issued.

The comments of Northwestern Public Power Association were confined to the public notice given upon the filing of applications for issuance of securities and stated they were not in a position to comment on the format of the application.

Gulf States Utilities Co. and Florida Power Corp. indicated that the additional information required to be filed regarding the construction program under § 34.2(j)(7) would be unduly burdensome particularly in respect to projects contemplated for completion in the somewhat distant future for which financial arrangements must be made considerably in advance of determining the final details and specifications of particular items. First, we wish to point out that the information respecting future construction is on a estimated and not on a finalized basis, and secondly, the information requested is no more than what applicants have in the past been submitting pursuant to special requests of the Commission's staff. We feel that the information is essential to the administration of section 204 of the Federal Power Act. Accordingly, with the exception of the changes noted above, we are adopting the revision as originally proposed in the notice.

The Commission finds:

Adoption and promulgation of the proposed amendments are necessary and appropriate for the purposes of administration of the Federal Power Act.

The Commission, acting pursuant to authority granted by the Federal Power Act, as amended, and particularly sections 204 and 309 thereof (49 Stat. 850, 856; 16 U.S.C. 824c, 825h), *orders:*

(A) Part 34, Subchapter B—Regulations under the Federal Power Act, Chapter I, Title 18 of the Code of Federal Regulations is amended by revising §§ 34.2 *Contents of application* and 34.3 *Required exhibits* to read as set forth in the attachment hereto.*

(B) These amendments to the Commission's Regulations under the Federal Power Act, shall become effective April 1, 1963.

(C) The Secretary of the Commission shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP62-69

FINDINGS AND ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 14, 1963)

On January 10, 1963, United Gas Pipe Line Company (Movant) filed in Docket No. CP62-69 a motion to amend the order issued in said docket on July 19, 1962, 28 FPC 188. The order of July 19, 1962, authorized Movant to construct and operate facilities and to sell natural gas to Othur K. Herring, d/b/a Herring Utilities (Herring), for resale and distribution in the northeast section of Livingston Parish, Louisiana. The order further provided that the facilities should be constructed and placed in actual operation within 90 days from the date on which the order was issued.

Movant now requests that the order of July 19, 1962, be amended to provide for

*Attachment omitted in printing.

the sale and delivery of natural gas to be made to Gas Utility District No. 1 of Livingston Parish, Louisiana (District), in place of Herring. The District has succeeded to Herring's obligations to render service in the northeast section of Livingston Parish and has requested Movant to furnish gas for resale and distribution in that area.

By notices issued October 11, 1962, and December 28, 1962, extensions of time were granted through February 17, 1963, within which to complete construction and place in actual operation the facilities authorized by the order of July 19, 1962. In its instant motion Movant requests that the time be further extended through June 1, 1963.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order of July 19, 1962, in Docket No. CP62–69 be amended to authorize the sale of natural gas for resale and distribution to Gas Utility District No. 1 of Livingston Parish, Louisiana, in lieu of Othur K. Herring, d/b/a Herring Utilities.

(2) The time within which the facilities necessary to make the subject sale should be completed and placed in actual operation should be extended to June 1, 1963.

The Commission orders:

(A) The Commission's order of July 19, 1962, in Docket No. CP62–69 be and the same is hereby amended to authorize the sale of natural gas for resale and distribution to Gas Utility District No. 1 of Livingston Parish, Louisiana, in lieu of Othur K. Herring, d/b/a Herring Utilities.

(B) The facilities necessary to make the subject sale should be completed and placed in actual operation by June 1, 1963.

(C) In all other respects said order of July 19, 1962, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP63–29

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 15, 1963)

On July 30, 1962, Cities Service Gas Company (Applicant) filed in Docket No. CP63–29 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and to render service, all as more fully set forth in the application.

The proposed facilities are described as follows:

To tap Applicant's 12-inch Pittsburg pipeline, construct a meter setting with appurtenant regulator equipment in Crawford County, Kansas, and to sell natural gas therefrom to The Gas Service Company for resale and distribution in and about Langdon Lane, Kansas, also to tap Applicant's 8-inch pipeline, in Barber County, Kansas and to construct a meter setting with appurtenant regulator facilities, to sell therefrom natural gas to the City of Sharon, Kansas, for resale and distribution in that city and the area. Natural gas in now being supplied from another source that is threatened with depletion in the near future.

The estimated peak day and annual requirements for the two respective communities are as follows:

Year	Langdon Lane, Kans.		City of Sharon, Kans.	
	Mcf at 14.73 psia		Peak day	Annual
	Peak day	Annual		
First	135	11,300	24	2,584
Second	160	13,400	24	2,584
Third	160	13,400	24	2,584

The proposed sale by Applicant to The Gas Service Company will be made under Applicant's Gas Rate Schedules F–2, C–2, and I–2. The sale to City of Sharon will be made under Applicant's FPC Gas Rate Schedules F–1, C–1 and I–1.

The estimated cost of the proposed facilities required to serve Langdon Lane is $1,280.00 and the estimated cost for facilities to serve the City of Sharon is $3,000.00. Applicant will finance these amounts from cash on hand.

Service to these customers will not impair Applicant's ability to serve its existing customers.

Pursuant to due notice, a public hearing was held in Washington, D.C., on February 7, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Cities Service Gas Company, is a natural gas company within the meaning of the Natural Gas Act, as is stated in (3) at page 4 of the application on file herein and as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsection (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale and delivery of natural gas, as hereinbefore described are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of said Regulations, and that the construction of the facilities authorized by this order should be completed

and said facilities placed in actual operation within six months from the date on which this order issues.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Cities Service Gas Company to construct and operate the facilities hereinbefore described, and to sell and deliver natural gas for resale to The Gas Service Company and the City of Sharon, under the terms of the respective rate schedules above stated.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

(C) The construction of the facilities authorized by this order shall be completed and said facilities shall be placed in actual operation within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EASTERN SHORE NATURAL GAS COMPANY, DOCKET NO. CP63-113

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 15, 1963)

On November 1, 1962, Eastern Shore Natural Gas Company (Applicant) filed in Docket No. CP63-113 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to transport 4,000 Mcf per day of natural gas in addition to the 4,000 Mcf per day volume presently being transported through its facilities for the term from December 1, 1963 to November 30, 1964.

The additional 4,000 Mcf per day of gas to be transported as aforesaid will be supplied by Transcontinental Gas Pipe Line Corporation for the account of Delaware Power and Light Company. The transportation of the gas will take place between the point of interconnection of Applicant's facilities with the facilities of Transcontinental Gas Pipe Line Corporation near Parkersburg, Pennsylvania to an existing point of connection with the Delaware Power Company's facilities near Newark, Delaware.

Delaware Power and Light Company will use the gas so transported to meet its increased demands upon its system pending the time when authorization and construction of its own facilities to perform the services can be effectuated, which time is estimated to be about November 30, 1964.

The rates for the proposed transportation service are those set forth in Rate Schedule T-1 to Applicant's FPC Gas Tariff, Original Volume No. 1.

Pursuant to due notice, a public hearing was held in Washington, D. C., on February 7, 1963, respecting the matters involved in and the issues presented by the application. Delaware Power and Light Company filed a petition to inter-

vene in support of the application and the disposition made herein. No other petition to intervene or protest to the granting of the application has been received. Staff Counsel moved orally at the hearing that the intermediate decision procedure be omitted and the Commission render a decision herein pursuant to Section 1.30(c) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Eastern Shore Natural Gas Company is "a natural-gas company" within the meaning of the Natural Gas Act and subject to the jurisdiction as averred in the application filed herein, as heretofore found by the Commission in its order of November 29, 1957 in Docket No. G–12200 (18 FPC 710).

(2) Applicant is presently transporting natural gas through its existing facilities to the Deleware Power and Light Company and it is through these same facilities that the proposed additional transportation for the period December 1, 1963 through November 30, 1964, is to be conducted. No construction of new facilities is here being proposed by the applicant.

(3) Transcontinental Gas Pipe Line Corporation was authorized by order of the Commission to supply additional gas service to its customers on May 17, 1962, in Docket No. CP62–86.

(4) Applicant is able and willing to do properly the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The transportation service proposed by the Applicant of natural gas for Delaware Power and Light Company for public distribution and sale by it is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) A request made during the public hearing by Staff Counsel for the omission of the intermediate decision procedure under Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure was unopposed by any party of record, and not having been denied by the Commission is granted pursuant to Section 1.30(c)(1) of the said rules.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Eastern Shore Natural Gas Company, to transport additional 4,000 Mcf per day of natural gas for Delaware Power and Light Company's account for the period December 1, 1963 through November 30, 1964, all as more fully described in the application.

(B) The certificate issued by paragraph (A) above, and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act particularly Section 157.20 of said Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

THE MANUFACTURERS LIGHT & HEAT COMPANY, DOCKET NO. CP63–155

FIDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 15, 1963)

On December 5, 1962, The Manufacturers Light and Heat Company (Applicant) filed in Docket No. CP63–155 an application pursuant to Section 7(c) of the

Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1963 and the operation of relatively minor natural gas facilities for service to existing markets, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in constructing and replacing relatively small-scale facilities without the delay incident to the filing and processing of individual certificate applications.

The proposed facilities will not exceed a maximum cost of $1,200,000, with no single project to exceed a cost of $300,000.

The proposed service will be rendered in existing markets under presently filed rates. The proposed facilities will not be used to extend service to new market areas, to new direct industrial customers, or to develop new storage fields.

Pursuant to due notice, a public hearing was held in Washington, D.C., on February 5, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, The Manufacturers Light and Heat Company, a Pennsylvania corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 29, 1944, in Docket No. G-593, *et al.* (4 FPC 821).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) Public convenience and necessity require that Applicant should submit within 60 days after the expiration of the authorization hereinafter granted, a statement showing by projects: (a) location, (b) description, (c) facilities replaced, if any, (d) abandonment of service, if any: (e) capacity increase, if any, and (f) actual final costs.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should obtain such authorization as may be required from the Federal Power Commission or the West Virginia Public Service Commission for any abandonment of service that may result by the replacement of facilities as authorized herein.

(8) The certificate issued hereinafter should be limited to construction during the calendar year 1963 at a total cost not to exceed a maximum of $1,200,000, with no single project to exceed a cost of $300,000.

(9) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, The Manufacturers Light and Heat Company, to construct, replace and operate natural gas facilities for service to existing markets as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit by March 1, 1964, a statement showing by projects: (a) location, (b) description, (c) facilities replaced, if any, (d) abandonment of service, if any, (e) capacity increase, if any, and (f) actual final costs.

(D) Applicant shall obtain such authorization as may be required from the Federal Power Commission or the West Virginia Public Service Commission for any abandonment of service that may result by the replacement of facilities as authorized herein.

(E) The certificate issued by paragraph (A) above is limited to construction during the calendar year 1963 at a total cost not to exceed a maximum of $1,200.000, with no single project to exceed a cost of $300,000.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NOS. CP63–148 AND CP62–61

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND DISMISSING APPLICATION

(Issued February 15, 1963)

On November 27, 1962, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP63–148 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during a 12-month period, and the operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

Concurrently with the application in Docket No. CP63–148 Applicant filed in Docket No. CP62–61 an application for renewal of the "budget-type" authorization

granted in the latter docket which authorization was to terminate on November 28, 1962. This extension was to be effective only for the period from November 28, 1962, until a new certificate would be issued in Docket No. CP63–148. Inasmuch as the instant order issues a certificate in Docket No. CP63–148, the application for renewal in Docket No. CP62–61 is rendered moot and may be dismissed.

The total cost of the proposed facilities will not exceed a maximum of $4,000,000, and no single project will exceed a cost of $500,000. The proposed facilities will be financed from funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on February 7, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c) (1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) The facilities hereinbefore described as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities to take natural gas purchased from producers thereof as proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization hereinafter granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization hereinafter granted, (d) location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period commencing on the date on which this order issues,

and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $4,000,000, with no single project to exceed a cost of $500,000.

(8) The application for renewal of "budget-type" authorization filed on November 27, 1962, in Docket No. CP62–61 should be dismissed as moot.

(9) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Panhandle Eastern Pipe Line Company to construct during the 12-month period commencing on the date on which this order issues the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Panhandle Eastern Pipe Line Company.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the 12-month period commencing on the date on which this order issues, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $4,000,000, with no single project to exceed a cost of $500,000.

(E) The application for renewal of "budget-type" authorization filed on November 27, 1962, in Docket No. CP62–61 be and the same is hereby dismissed as moot.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TENNESSEE GAS TRANSMISSION COMPANY, AND TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP63–112

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 15, 1963)

On October 31, 1962, Tennessee Gas Transmission Company (Tennessee) and Transcontinental Gas Pipe Line Corporation (Transco) filed in Docket No. CP

63–112 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of an emergency interconnection between the pipeline systems of the two companies at a point where Tennessee's South Lousiana 20-inch line crosses Transco's 30-inch main line "A" in Allen Parish, Louisiana, all as more fully set forth in the application.

The proposed facilities will be utilized when either company is confronted with an emergency which can be alleviated by the deliveries of natural gas from the other when such deliveries can be made without impairment of service obligations to others. All emergency deliveries will be made on a gas-for-gas exchange basis.

The total cost of the proposed emergency interconnection is estimated to be $21,391. $10,405 will be shared equally between the two Applicants; Tennessee will spend $5,986 for tap and sidevalve equipment; and Transco will spend $5,000 for tap and sidevalve equipment.

Pursuant to due notice, a public hearing was held in Washington, D.C., on February 6, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of July 15, 1947, in Docket No. G–910 (6 FPC 777).

(2) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G–1143 (7 FPC 145).

(3) The facilities hereinbefore described, all as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the exchange of natural gas by Applicants are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities and the exchange of natural gas by Applicants are required by the public convenience and necessity, and a certificate therefore should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record

and, not having been denied by the Commission is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby granted authorizing Applicants, Tennessee Gas Transmission Company and Transcontinental Gas Pipe Line Corporation, to construct and operate the proposed facilities and to exchange natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

(D) Applicants shall file appropriate rate schedules for the exchange service authorized herein, within 30 days of the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NOS. RP61-19 AND RP62-7

ORDER CONSOLIDATING PROCEEDINGS, ESTABLISHING PROCEDURES, AND FIXING DATE FOR PRE-HEARING CONFERENCE

(Issued February 18, 1963)

On February 13, 1961, the Commission instituted a proceeding in Docket No. RP61-19 to determine whether the rates, charges and classifications of Midwestern Gas Transmission Company for sales from its Southern system are just and reasonable as required by section 5(a) of the Natural Gas Act.

On May 28, 1962, the Commission in Docket No. RP62-7 instituted an investigation of the justness and reasonableness of Midwestern's rates, charges and classification for sales and exchanges from its Northern system. It is now appropriate to order that RP61-19 and RP62-7 be consolidated for purposes of hearing and decision. Any party heretofore admitted as an intervenor in either of the dockets will be recognized as an intervenor in the consolidated proceeding.

The Commission is desirous that these consolidated proceedings be expedited to the fullest extent possible. To that end we will establish a procedure which incorporates, insofar as feasible in a section 5 proceeding, the principles of the Commission's Order No. 257, 28 FPC 791, establishing an expedited procedure for pipeline increased-rate cases. That procedure's goals include the early identification of the position of the parties on all relevant issues, the elimination from formal trial of all issues that can be resolved through stipulation, and the efficient trial of the remaining genuinely disputed issues.

Accordingly, it is appropriate that we fix a date upon which the Commission staff shall file and serve upon all the parties prepared testimony and exhibits

comprising its entire case-in-chief and a subsequent date upon which Midwestern shall file and serve prepared testimony and exhibits comprising its entire case. The prehearing conference for which we are providing shall be convened for the purposes of setting a date for the serving and filing of intervenor testimony and of whatever rebuttal testimony may be determined to be necessary, reaching a stipulation of the issues which can be eliminated from the hearing, and setting a date for the commencement of formal hearing on these specifically defined issues which can not be so eliminated, and for such other purposes as the Presiding Examiner may find desirable.

The Commission orders:

(A) Docket No. RP61–19 and Docket No. RP62–7 are consolidated for purposes of hearing and decision.

(B) The Commission staff, on or before February 26, 1963, shall file and serve upon all parties copies of the prepared testimony and exhibits comprising its entire direct case-in-chief in these proceedings.

(C) Midwestern, on or before March 28, 1963, shall file and serve the prepared testimony and exhibits which it proposes to adduce on the record.

(D) Presiding Examiner Joseph Zwerdling, or any other officer or officers of the Commission designated by the Chief Examiner for that purpose (see delegation of authority, 27 F.R. 4276, etc.) shall preside at the pre-hearing conferences and at the hearing in this matter, pursuant to the Commission's Rules of Practice and Procedure.

(E) Without limitation upon the authority of the Presiding Examiner to convene pre-hearing conferences prior to, or subsequent to the date herein fixed, pursuant to the provisions of Section 1.18 of the Commission's Rules of Practice and Procedure, a pre-hearing conference before the Presiding Examiner herein designated shall commence at 10:00 a.m. (EST) on April 8, 1963, in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., for the purpose of effectuating the intent of the Commission as hereinabove set out in the body of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

THE OHIO FUEL GAS COMPANY, DOCKET NO. CP63–153

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 18, 1963)

On December 3, 1962, The Ohio Fuel Gas Company (Applicant) filed in Docket No. CP63–153 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and replacement of facilities during the calendar year of 1963, and the operation of such facilities, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch to maintain service to its existing customers.

The total cost of the proposed facilities will not exceed a maximum of $2,500,000.00 and no single project will exceed a cost of $500,000. The proposed facilities will be financed from funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on February 7, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or

petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) The Ohio Fuel Gas Company, is engaged in the transportation and sale of natural gas for resale for ultimate distribution to the public as stated in its application and is therefore a natural gas company within the purview of the Natural Gas Act.

(2) The facilities hereinbefore described as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction, replacement and operation of facilities as proposed, are to enable Applicant to improve service to its existing customers and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 thereof.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit on or before March 1, 1964, a statement showing by projects: (a) a description of the project or projects that have been constructed pursuant to the authorization hereinafter granted, (b) location of said projects, (c) facilities replaced, if any, (d) abandonment of service, if any, (e) capacity increase, if any, and (f) the actual final cost of facilities constructed under the authorization herein granted.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period of the calendar year of 1963, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $2,500,000.00 with no single project to exceed a cost of $500,000.00.

(8) The certificate issued hereinafter should be conditioned upon Applicant obtaining permission and approval, as required, from the Ohio Public Utilities Commission or the Federal Power Commission for any abandonment of service that may result from the replacement of facilities authorized by said certificate.

(9) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission is granted pursuant to Section 1.30(c) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing The Ohio Fuel Gas Company to construct, replace and operate facilities during the calendar year 1963, as more fully described in the application in this proceeding.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general

terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit on or before March 1, 1964, a statement showing by projects: (a) a description of the facilities or projects that have been constructed pursuant to the authorization herein granted, (b) the location of said project or projects, (c) facilities replaced if any, (d) abandonment of service, if any, (e) capacity increase, if any, and (f) the actual final cost of facilities constructed under the authorization herein granted.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year of 1963 and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $2,500,000.00 with no single project to exceed a cost of $500,000.00.

(E) Applicant shall obtain permission and approval, as required, from the Federal Power Commission or the Ohio Public Utilities Commission for any abandonment of service which may result from the replacement of facilities authorized herein.

OPINION NO. 379

SOUTHERN NATURAL GAS COMPANY, DOCKET NOS. G-20509 AND RP60-15

OPINION AND ORDER DETERMINING RATES

(Issued February 18, 1963)*

Syllabus

1. Proper test year here was correctly settled by earlier orders—namely the twelve months ending June 30, 1959, as adjusted. P. 328.
2. Commission *adopts* Southern's test year sales adjustments. P. 329.
3. Three-year average urged by Southern [1958, 1959 and 1960] is more nearly representative of anticipated costs, and is fair measure of amount of exploration and development expense to be included in adjusted cost of service. P. 330.
4. Where there is wide year to year variation in maintenance costs of producing wells, it is proper that cost of service allowance thereof be computed as an average of number of years of recent experience. P. 331.
5. Search for storage is properly related to Southern's pipeline operations whether carried out by Southern or its subsidiary; related expenses incurred by Southern in test year cannot be considered here to be nonrecurring by reason of subsequent transfer of storage activities to subsidiary. PP. 331-332.
6. In fixing Southern's rates Commission computes Federal Income Tax allowance using straight line depreciation deduction subject to condition that such rates shall be adjusted to reflect, on prospective basis, any change in policy resulting from *Alabama-Tennessee*. P. 334.
7. It has not been demonstrated, either generally or here, that pipeline exploration and drilling integrated with marketing activities involve same degree of risk as that encountered by independent producer. P. 336.
8. Southern has failed to demonstrate existence of any benefits to its jurisdictional customers resulting from its production operations. P. 337.
9. To warrant additional return on production properties pipeline should: (1) demonstrate production activity is for sole purpose of supplying gas to

*Rehearing denied; stay granted by order issued March 7, 1963, 29 FPC 433. Petition for Review dismissed on November 22, 1963, in *Southern Natural Gas Company* v. *F.P.C.* (CA3 No. 14399).

pipeline customers, and (2) show that production operation is or will be of practical economic advantage to pipeline customers. P. 337.

10. Southern has failed to justify a return on its wellmouth properties higher than that fixed for its pipeline properties. P. 338.
11. Southern allowed 1.5 percent on accumulated deferred taxes subject to future adjustment of return and rates [see 6, *supra*].
12. Southern leases held for future development are properly included in its rate base as plant held for future. P. 339.
13. Overall rate of return of 6.24 percent *allowed*, reflecting weighted average of 6.5 percent on debt and equity capital and 1.5 percent on deferred taxes. P. 340.
14. Commission follows *Atlantic Seaboard* method of cost classification, finding no factual basis here to justify departure therefrom. P. 342.
15. Finding facts here justify departure from general practice, Commission *concludes* use of contract requirements rather than actual peak period deliveries is to be preferred as measure of peak responsibility. PP. 343–344.
16. There is no substantial basis in this record for departure from Mcf-mile method in allocation of transmission costs. P. 345.
17. Demand and commodity miles computed in accordance with actual flow to all delivery points provides proper basis for allocation of transmission costs here. P. 346.
18. Citing *Tennessee Gas, Opinion No. 352*, Commission *allocates* transmission costs in Southern's zones 50 percent on basis of Mcf-miles and 50 percent on historical revenues. P. 348.
19. Commission *rejects* "Annual Capacity" method of cost classification and allocation. P. 350.
20. Commission *adopts* two-block commodity charge rate design [Staff's Basis No. 4] as preserving principles of *Atlantic Seaboard* while enabling Southern's distributors to retain industrial business. P. 353.
21. Commission *disallows* proposed rates tendered under Section 4(d) of the Natural Gas Act and *determines* just and reasonable rates. P. 356.

Commissioner Ross *filed* supplemental statement.

Commissioner Morgan *concurring* in result.

Commissioner O'Connor *concurring*.

Commissioner Woodward *concurring* in part, *dissenting* in part.

William S. Tarver, H. D. McHenry and *Peter G. Smith* for Southern Natural Gas Company.

Lawrence Dumas, Jr., and *Albert J. Feigen* for South Georgia Natural Gas Company.

Crawford L. Pilcher, Ben T. Wiggins and *Alvin J. Rowe, Jr.*, for Georgia Public Service Commission.

E. K. Hanby, Jr., for City of Gadsden, Alabama.

Dale A. Wright, Harold L. Talisman and *Harry S. Littman* for Alabama Gas Corporation.

Herman W. Boozer, William H. Schroder and *Tench C. Coxe* for Georgia Power Company.

Maurice F. Bishop, O. C. Owen, Ralph Smith and *Chris Whatley* for Alabama Public Service Commission.

Arthur M. Williams, Jr., J. David Mann, Jr., and *William W. Ross* for South Carolina Natural Gas Corporation.

S. E. Kelly, Jr., for Gas Light Company of Columbus, Georgia.

Horace E. Richter, Frank Tinger and *John Arnold* for Gas Section, Georgia Municipal Association.

Allison Wade, E. Smythe Gambrell, Harold L. Russell and *Theodore M. Forbes, Jr.*, for Georgia Textile Manufacturers Association, Inc., and Georgia Industrial Gas Users Association.

Clarence J. Koontz, Leonard M. Shinn, Donegan Mann and *David T. Bryant* for Administrator of General Services.

H. H. Hillyer, Jr., and *Andres McCollam, Jr.*, for South Atlantic Gas Company.

Harry A. Poth, Jr., Richard M. Merriman and *Peyton G. Bowman* for Mississippi Valley Gas Company.

Joe Starnes for Marshall County Gas District.

L. G. Hills for Alabama Municipal Gas Association.

E. W. Moise, D. A. Crawford and *Norman A. Flaningam* for Atlanta Gas Light Company.

Hon. John J. Snows and *Arthur M. Williams, Jr.*, for South Carolina Public Service Commission.

Mayer U. Newfield for City of Birmingham.

Mayer U. Newfield, S. H. Sprott and *J. Wagner Finnell* for City of Tuscaloosa, Alabama.

R. L. Anderson, Jr., James A. May, Kurt F. Pantzer, Walker W. Lewis, Jr., and *Reuben Goldberg* for Georgia Kraft Company.

Frank D. Foley for Gas Light Company of Columbus.

Edwin M. Miller and Francis J. Gilmore for Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

Ross, *Commissioner*:

I. Procedural Background

These proceedings involved increased rates filed by Southern Natural Gas Company (Southern) under Section 4(d) of the Natural Gas Act (Act). These filings, made on November 25, 1959, in Docket No. G–20509, and on June 2, 1960, in Docket No. RP60–15, proposed increased rates designed to recover the cost of serving Southern's jurisdictional customers, including a 7 percent over-all return on a net investment rate base. The RP60–15 filing was based on the same test period and test period data as the filing in G–20509, but was adjusted to give effect to an increase in the cost of gas purchased by Southern from United Gas Pipe Line Company (United) resulting from a rate increase filed by United in Docket No. RP60–2 which became effective August 13, 1960. Based upon sales for the test year ending June 30, 1959, as adjusted, the annual increase proposed in G–20509 was $7,756,563; and the additional increase proposed in RP60–15 was $1,312,000.

By order issued December 24, 1959, the Commission suspended the increased rates in G–20509 until June 1, 1960. Hearings commenced before the presiding examiner on January 26, 1960, and continued until May 10, 1960, when staff moved for an interim order on rate of return and omission of the intermediate decision procedure with respect thereto.[1] The examiner referred these motions to the Commission for decision, and granted a continuance of the hearing until September 14, 1960. By order issued May 27, 1960, the Commission omitted the intermediate decision procedure and fixed June 24, 1960, for oral argument. Thereafter, on July 8, 1960, 24 FPC 26, the Commission issued an interim order

[1] At the time of staff's motions, Southern had presented all of its direct case, except certain evidence relating to rate of return on production properties; staff had presented its direct case on rate of return; and cross-examination of both Southern's and staff's witnesses on rate of return had been completed.

fixing the rate of return on Southern's pipeline properties at 6.5 percent, and reserving all other issues presented for disposition in the second phase of the proceedings, including the effect on the rate of return of accumulated deferred income taxes, the rate of return to be allowed on Southern's production properties, and the proper treatment of tax benefits with respect to percentage depletion and intangible well drilling expenses. Giving effect to the 6.5 percent rate of return found to be "fair, just and reasonable" for Southern's pipeline properties, and to the 7 percent rate of return claimed by Southern for its production properties, the Commission computed an over-all composite rate of return of 6.52 percent to be allowed to Southern for the purpose of filing substitute reduced rates to be effective June 1, 1960. Southern filed substitute rates in accordance with the interim order on July 18, 1960.

Meanwhile, on June 2, 1960, Southern had filed the increased rates in RP60–15 which were designed to pass along the applicable portion of the increased rates filed by United in RP60–2. On July 29, 1960, the Commission issued an order accepting and allowing to become effective as of June 1, 1960, subject to investigation, hearings and further order, the substitute rates filed by Southern in G–20509. The same order disallowed the rates filed by Southern in RP60–15, directed that Southern file substitute rates in that docket to reflect the Commission's July 8, 1960, rate of return determination in G–20509, and consolidated the two proceedings for purposes of hearing. Such substitute rates in RP60–15 were filed by Southern on August 5, 1960, and by order issued August 24, 1960, were allowed by the Commission to become effective as of August 13, 1960, subject to investigation, hearings and further order. In accordance with the Commission's orders of July 8, 1960, and July 29, 1960, Southern is under obligation to refund at 7 percent interest per annum from the date of payment any portion of the increased rates and charges permitted to become effective in these dockets which, upon final order herein, the Commission finds to be unjustified.

After a number of further continuances granted by the examiner, the hearings in the second phase of these proceedings resumed on February 7, 1961, and continued intermittently until concluded on July 20, 1961. Briefs and reply briefs were then filed by the parties, and thereafter, upon motion by Southern, the Commission by order issued January 19, 1962, waived the intermediate decision procedure with respect to this second phase of the proceedings and directed that oral argument be held before the Commission.[2] The Commission heard oral argument on February 8, 1962, and the issues presented are now before the Commission for decision.[3]

II. The Issues

The ultimate determination to be made by the Commission in these proceedings is of the just and reasonable rates for Southern to be allowed in G–20509 for the period commencing June 1, 1960, and in RP60–15 for the period commencing August 13, 1960. Inasmuch as the Commission has permitted Southern to use the G–20509 test year and test year data, with the exception of the increased cost of gas purchased from United and the increased operating costs based thereon, in support of its filing in RP60–15,[4] and inasmuch as the same

[2] This procedure was necessitated by the death of the presiding examiner shortly following the conclusion of the hearings.

[3] Interveners appearing and/or participating in these proceedings are listed in the appearances attached to this opinion. These interveners include Southern's distributing company and industrial customers, and federal, state and local agencies or bodies purchasing or representing purchasers of gas in Southern's service area. Southern's pipeline system extends from Louisiana to South Carolina, serving customers in Mississippi, Alabama, Georgia, and South Carolina.

[4] Letter of April 7, 1960.

allocation and rate design methods were used by Southern in both dockets, the issues presented in each of the two dockets are the same and the only difference between the rates herein to be determined for G–20509 and RP60–15 will be a proportionate increase in the latter based on the increased cost of gas purchased by Southern from United after August 13, 1960. Except as otherwise noted, the costs hereafter referred to in this opinion and order are the costs applicable to RP60–15, including the United increase.

The issues in this case fall generally into three categories. The first group includes issues relating to Southern's cost of service. In this group are questions as to the test year to be used, adjustments to be made in test year sales and costs, rate base and return. The second group includes issues relating to the classification and allocation of costs, among which are questions as to the treatment of production costs, the use of the Mcf-mile method of allocation or some variation thereof, the importance of historical zone rate differentials, and peak day responsibility. The third group includes issues relating to the design of Southern's rates and the determination of the proper relative levels of demand and commodity charges to be fixed in each of Southern's rate zones.[5]

III. Cost of Service

A. Test Year

Southern's rate filings and its cost of service evidence in support thereof are based upon a test period consisting of the twelve months ending June 30, 1959, as adjusted. This test year constituted the "most recently available actual experience" of Southern at the time of its filing as required by the then designated Section 154.63(b)(3)(i)(e) of the Commission's Regulations under the Natural Gas Act. However, certain major adjustments in the test year period were required because of the expansion of Southern's system during the test year. As explained by Southern's witness:

> Q. Will you explain the important changes which required adjustments in the 12 months of actual experience?
>
> A. The design daily delivery capacity of Southern's system was increased in December, 1958 from 990,000 Mcf to 1,185,000 Mcf. This capacity was further increased to 1,365,000 Mcf in December, 1959. Accordingly, the test period reflects the operation of a system with a design daily delivery capacity of 1,365,000 Mcf.
>
> Since the system with this increased capacity has been in service only about a month, no total experienced costs or sales are available. It was necessary, therefore, to use contract demands and maximum delivery obligations which became effective November 1, 1959, and estimated annual sales related thereto, and estimated non-jurisdictional sales for the 12 months period immediately following the capacity increase, certain estimated operating expenses and an estimate of the cost of the new facilities which were constructed in connection with the capacity increase.
>
> In short, the test period consists of 12 months of operation of the system with its present capacity of 1,365,000 Mcf.

Although actual operating data and experienced costs for the year 1960 were not available to Southern at the time it presented its direct case, such data were available to staff at the time staff presented its case. Staff gave

[5] Zone 1 includes Mississippi; Zone 2 includes Alabama, plus Columbus and West Point in Georgia; Zone 3 includes the rest of Georgia, plus the Aiken-North Augusta area of South Carolina. This zone structure became effective on November 1, 1959, as part of the tariff changes filed by Southern in Docket No. G–18512. Prior to that time, Chatham County Georgia, and the South Carolina portion of Zone 3, were included in a separate Zone 3A.

consideration to the use of a later test year on the basis of this information, but decided to utilize the same test period used by Southern, as well as the adjustments for costs and sales made by Southern to reflect its system expansion, concluding that the test year as projected for the year 1960 was a sufficiently reliable guide to Southern's expanded operations to be utilized in determining its rates for the future in these proceedings.

Opposed to use of the test year adopted by Southern and staff, the Georgia Public Service Commission (Georgia PSC), with the support of other Zone 3 interveners, requested the examiner to direct Southern to make available at its offices certain books, records and other data so that the Georgia PSC could prepare a cost study based upon a test period of 12 months ending April 30, 1961, to be introduced in evidence in the proceedings. On June 12, 1961, the examiner denied the request of the Georgia PSC, finding that he had no authority for issuing such a directive, and that even if he had, the action requested was not justified by the facts of the case. The examiner further noted that the Commission had heretofore fixed the date of June 26, 1961, for the serving of interveners' prepared testimony and exhibits. On June 23, 1961, the Commission affirmed the examiner's ruling and further refused to issue a subpoena *duces tecum* for the same purpose, stating, among other things, that the delay of these proceedings which would follow the introduction of a later test year was not justified, 25 FPC 1207. Nevertheless, the Georgia PSC thereafter offered in evidence at the hearings an exhibit and related testimony presenting a cost of service and revenue study for the year ending April 30, 1961, based on Southern's Form 11 reports and other material already in the Commission's files. This the examiner on July 14, 1961, rejected, although he did permit it to be used as an offer of proof. Upon appeal by the Georgia PSC the Commission, by its order issued July 31, 1961, affirmed the examiner's ruling, stating that upon a consideration of all the facts and circumstances, "including the excluded exhibit and related testimony received as an offer of proof and the additional data incorporated in the record by reference," it was still of the opinion that the introduction of a later test period was unjustified.

Although the Commission has thus rejected the Georgia PSC's efforts to put in evidence a cost of service and revenue study based on a test year ending April 30, 1961, the Georgia PSC in its main brief continues to urge upon the Commission the adoption of the later test year; and in its brief, the Georgia PSC sets forth a cost of service and revenue study based on the later test year which is essentially the same as that previously offered in evidence and excluded by the Commission. We recognize the desire of the Georgia PSC to preserve its position by arguing to the later test year in its brief; but this presentation cannot be accepted as a basis for reconsideration of our earlier orders denying its use, and certainly cannot be accepted as proof of Southern's costs and revenues. In our opinion, based on consideration of the full record, the matter of the proper test year to be utilized in these proceedings to fix Southern's rates was correctly settled by the earlier orders referred to, and is the test year utilized by Southern and by staff—namely, the twelve months ending June 30, 1959, as adjusted. The only issues with respect to the test year properly before us now are the adjustments thereto.

B. TEST YEAR SALES ADJUSTMENTS

The Georgia PSC, and those of the Zone 3 interveners who have supported the Georgia PSC's proposal for use of a later test year, attack the adjusted sales figures included by Southern in its presentation and adopted by staff. These sales figures represent projections or estimates for the year 1960, which was the

first full year of operation by Southern following its system expansion, and, with the Commission's permission, are based on customer nominations as of November 1, 1959, which were originally provided for the purpose of securing a certificate for Southern's new facilities in *South Georgia Natural Gas Co., et al.*, 22 FPC 211, decided June 11, 1959. The interveners' objections to the use of these adjusted figures stem from the fact that there was a substantial drop in the level of interruptible industrial sales in 1960. By using a test year ending April 30, 1961, as urged by the Georgia PSC, recognition would be given to changes in Southern's sales to particular customers which would result in a more favorable allocation of costs to customers in Zone 3.

In adjusting test year sales figures, the basic question to be considered is what is the best measure of future sales as related to test year costs. Use of the later sales data, as proposed by the interveners identified above, would necessitate correlative cost adjustments. In effect, these interveners are rearguing for the utilization of a later test year, the use of which we have already rejected. The only evidence with respect to test year sales adjustments was submitted by Southern, and this evidence, after analysis and comparison with 1960 data, was supported by staff. In our opinion, Southern's adjustments are reasonable, and we hereby adopt them.

C. OPERATING EXPENSE ALLOWANCES

Southern presented an overall gas system cost of service totaling $127,309,148. Staff, on the other hand, presented a cost of service for Southern's system operations totaling $123,784,549. A summary of the items of cost at issue in these proceedings, as developed in Southern's and staff's studies, together with our determinations with respect thereto, are set forth in the table below:

	Southern	Staff	Commission
Operating expenses:			
Exploration and development	$2,073,903	$1,438,619	$1,583,659
Production and gathering	1,794,105	1,717,284	1,717,284
Storage	117,696	0	117,696
Administrative and general	3,620,379	3,589,663	3,589,663
State income taxes	470,433	252,867	252,107
Taxes other than income	3,871,205	3,720,941	3,720,941
Federal income tax	9,260,611	7,508,272	7,485,669
Return	15,292,803	14,748,890	14,728,025

The total system cost of service for Southern as herein determined, and as set forth in Appendix A, is $124,003,057.

Considering the items of cost at issue in the order presented in the tabulation above, we turn first to the four categories of operating expenses. No question with respect to Southern's treatment of these expenses in the test year has been raised other than by staff. The Georgia PSC objects to use of the expense figures presented by both staff and Southern, but this objection is based on its contention that the cost of service should reflect expenses in a later test period, and is not directed to the question of the proper allowance to be made for the test year used by staff and by Southern, and here adopted by the Commission.

1. *Exploration and Development*

Southern included in its cost of service the actual exploration and development expenses applicable to the twelve months ending June 30, 1959, adjusted only to annualize delay rental expenses at the level of payments being made as of June 30, 1959. Staff, on the other hand, included a figure based on an

average of the expenses incurred for the calendar years 1957 through 1960. Staff would justify using a four-year average rather than actual expenses for the test period on the ground that exploration and development expenses varied widely from year to year, and that an average of a number of years of recent experience would give a figure which is most representative for rate making purposes. Staff's total four-year average was $2,572,361, as compared to Southern's total test year figure of $3,708,291. Of these amounts, staff determined the amount attributable to system gas operations to be $1,438,619, as against Southern's comparable system cost figure of $2,073,903, a difference of $635,284.

There was no controversy concerning the method to be used in allocating total exploration and development expenses among system gas, off-system gas and oil operations, it being agreed that Southern's method, based on gross investment in producing wells, was most appropriate to Southern's particular situation. The only issue, therefore, is whether actual expenses for the test year, or a four-year average, or some other average, should be used for determining the allowance for exploration and development.

The theory of determining rates on the basis of test year experience assumes that costs and revenues for the test year, properly adjusted to reflect known changes which will occur within the near future, will be typical of a company's experience beginning with the date on which its rates become effective. Where, however, certain costs are found to vary widely from year to year, it cannot be assumed that the data for the test year alone are typical; and to avoid distortion of a company's cost of service, and to determine costs which are most truly representative of the future, such items of expense which are characterized by such fluctuations may appropriately be averaged over a number of years of recent experience. This the Commission has done with respect to widely varying exploration and development costs such as appear in this case. The number of years over which such costs should be averaged is in each case a matter of Commission judgment.

Staff found the actual expense for the years 1957 through 1960 to be as follows:

1957	$1,794,333
1958	3,593,030
1959	2,071,089
1960	2,830,993

Staff used the average of these four years as the basis of its allowance for exploration and development in an effort to achieve a balance between the two high cost years of 1958 and 1960, and the two low cost years of 1957 and 1959. Southern, however, contends that if an average is to be used, a three-year average using the figures for 1958, 1959 and 1960 would be more appropriate. Southern would eliminate the low 1957 figure as unrepresentative of its costs today, thus producing an average figure substantially higher than that derived by staff. In our judgment, the three-year average urged by Southern is more nearly representative of Southern's anticipated costs, and is a fair and appropriate measure of the amount of exploration and development expense to be included in Southern's adjusted cost of service.

The average of actual expenses for the years 1958, 1959 and 1960 is $2,831,704. Allocating this total expense figure to system gas, off-system gas, and oil operations on the basis used by both staff and Southern, we find that the amount to be included in Southern's system cost of service for exploration and development expense is $1,583,659.

2. *Production and Gathering Expense*

Included in Southern's cost of service allowance for production and gathering

expense is an item for Account 734.3, Maintenance of Producing Gas Well Equipment—Other* which is based on actual expenses for the twelve months ending June 30, 1959, plus an adjustment to reflect a full year's operation in the Montegut field which was connected to Southern's system in August 1959. The Montegut adjustment was made on the basis of operating expenses in a similar area during the test period. Here, as in the case of exploration and development expense, staff objects to the use of the test year cost because of the yearly variation in production maintenance costs. Staff, in its cost of service, computed an allowance using a four-year average well-year expense which it multiplied by the number of well-years in the 12 months ending June 30, 1960. The adjusted amount so derived by staff is $182,735 as compared to Southern's allowance of $299,528. After allocating a portion of these amounts to off-system operations, the difference between staff's and Southern's figures applicable to Southern's system operations is $93,644.

Wide variations from year to year are not uncharacteristic of maintenance costs associated with producing wells, and where such variations appear it is proper that the cost of service allowance for such costs be computed as an average of a number of years of recent experience. In our opinion, the method utilized by staff, whereby an average expense is determined on the basis of a common denominator of well-years and this average cost per well per year is multiplied by the number of well-years for the adjusted test year, provides a reasonable basis for estimating future expense and should be used in this case. Accordingly, we adopt staff's computation of the Account 734.3 allowance, which, as noted above, results in a downward adjustment of $93,644 in that item as allocated to Southern's system operations.

We also adopt the offsetting adjustment of $16,823 proposed by staff with respect to Account 735.4, Joint Expenses Credit, and which relates to the adjustment of the maintenance costs in Account 734.3. Southern does not oppose this offsetting adjustment. The net effect of the two adjustments is a reduction of $76,821 in Southern's production and gathering expense allowance.

3. *Storage Expense*

Southern included an adjusted figure of $117,696 in its cost of service for storage expenses during the test year. These are expenses which were incurred by Southern in attempting to locate a geological formation suitable for gas storage. Staff did not question that the adjusted figure represents the expenditure made for storage; but proposed elimination of the entire expense on the ground that it was non-recurring, inasmuch as Southern transferred its activities relative to finding suitable storage to a wholly-owned subsidiary known as Sonat, Inc. in June 1960.

The record establishes the fact that Sonat is continuing the search for storage on behalf of Southern, that the funds for Sonat's activities were provided by Southern, and that any benefit therefrom will accrue to Southern. Staff, however, questions whether the benefits of Sonat's storage explorations will accrue to Southern's jurisdictional customers; but we cannot see that the transfer of the storage activities to Sonat creates any greater uncertainty in this regard than would exist if Southern were conducting the storage explorations itself. In our opinion the search for storage is an activity properly related to Southern's pipeline operations, whether carried out by Southern itself or its wholly-owned subsidiary, and the expenses incurred by Southern with respect thereto in the

*[Editor's note] References to account numbers herein are those which were in effect prior to the revision of the Uniform System of Accounts made by Order No. 219, and effective January 1, 1961, 23 FPC 825.

test year cannot be considered in this case to be non-recurring simply by reason of the subsequent transfer to Sonat. In any event, the objections raised by staff because of the transfer now appear to be mooted, since Sonat was formally dissolved effective October 13, 1961, and under the plan of liquidation all of Sonat's properties, assets and liabilities were transferred to Southern, which is again carrying on its own storage explorations as before.[6] We find the $117,696 included by Southern in its cost of service to be a reasonable and proper allowance for storage expense.

4. Administrative and General Expense

Southern showed a total adjusted figure of $68,371 for regulatory expense in its cost of service. This was based on the actual test year expense of $16,849, adjusted upward by $51,522 to reflect on an annual basis the anticipated expense of the present proceedings. Staff's total figure for this expense was $36,718, the average of such expenses over the four-year period from 1957 through 1960. After allocation of these total figures between system and off-system operations, the differences between Southern's allowance and staff's is $30,716.

Regulatory expense is a widely fluctuating expense, the benefits of which normally are received over a number of years, and it is the Commission's practice to utilize an average of such expenses for rate-making. The allowance made by staff should be adequate to permit Southern to recover its expenses in this case if it does not become involved too soon in further rate proceedings before the Commission. And even if Southern should find it necessary to file for a further increase to pass along additional increases in the cost of its gas purchased from United, it will have an opportunity at that time to show that its regulatory expense is trending upward still more, and to obtain whatever increased expense allowance is reasonably required to permit it to recover its expenses. It should be noted, however, that in such a subsequent proceeding, there would be no need to re-try all of the issues presented in the present case, and Southern's regulatory expense should be substantially less than that incurred in this case. We can find no justification at this time for an allowance as high as that proposed by Southern. The allowance made by staff is adequate, and the reduction of $30,716 in Southern's cost of service by reason thereof is reasonable.

D. STATE INCOME TAXES

Southern computed state income taxes for the test period by applying a composite percentage rate to net income subject to federal income taxes. The composite rate used was 2.64 percent, and was derived by relating estimated state income taxes for the year 1958 to the net income subject to tax on the 1958 federal income tax return. At this rate Southern's allowance for state income taxes was $470,433. Staff calculated its allowance by the same general method, but used a percentage factor of 1.75 percent based on tax data for the year 1959, the latest data available at the time staff prepared its cost of service study. Staff's allowance, as so determined, was $252,867, or $217,566 less than Southern's allowance. In using a ratio of 1.75 percent, staff made a small allowance for the prerogatives of state taxing authorities, so that the resulting allowance is something more than a bare bones figure. In our opinion staff's

[6] Although the fact of the dissolution of Sonat and the transfer of its properties back to Southern was not established at the hearing, which concluded prior thereto, and is not a part of the evidence in this case, we take official notice of these subsequent developments as described in Southern's reply brief and by its attorney at the oral argument before the Commission.

allowance, based on tax data for the year 1959, is more representative of the test year, which is the year ending June 30, 1959, as projected into 1960, than is Southern's allowance, based on earlier tax data. Staff's allowance is reasonable and adequate, and we hereby adopt it.

E. TAXES OTHER THAN INCOME

The differences between staff and Southern with respect to taxes other than income, relate primarily to the treatment of state property and franchise taxes which are based on assessed valuations. Staff and Southern also differ as to the treatment of a pipeline franchise tax in Louisiana which Southern has protested and has not paid.

At the time Southern prepared its cost of service study, the latest data available were the actual taxes paid during the test year based on assessed valuations as of January 1, 1959. Since some of the property upon which the 1959 assessments were based had been completed late in 1958, Southern contends that it was allowed by state taxing authorities to use below-normal assessments on such property, it being the practice of these states to under-assess new pipeline facilities immediately after they are placed in operation, and to increase the assessments to normal levels only after the facilities have been in service long enough to contribute to the company's income. Accordingly, Southern normalized the 1959 under-assessments by adjusting actual taxes for the test period to reflect anticipated future assessments. Southern also adjusted the actual taxes for property additions not yet included in assessments.

In lieu of such taxes as computed by Southern, staff used actual 1960 taxes based on the assessed valuation of Southern's expanded system as of January 1, 1960. Southern apparently has no objection to staff's use of the later tax data which was available to staff when it prepared its cost of service study; however, Southern contends that the 1960 taxes were based on under-assessments of the value of its new system facilities installed late in 1959, and should be normalized in the same way that Southern normalized the 1959 taxes.

The record shows that the taxes actually paid by Southern for 1960 were approximately $100,000 less than the taxes estimated by Southern for the test year. That these taxes should be lower than anticipated by Southern throws some doubt on Southern's theory that the facilities added in 1958, as well as those facilities added in 1959, would be subject to increased assessments in subsequent years. There is no evidence of record to show how soon after installation or in what amounts assessments of new properties are increased by state taxing authorities, and it is mostly a matter of conjecture at this point as to what Southern's future taxes may be. Under the circumstances, rate payers should not be required to contribute more than the actual taxes paid; and any future increases in Southern's property and franchise taxes due to adjusted assessments should be reserved for consideration in later rate cases. For the purposes of the present case, we find staff's allowance for such taxes, based on actual 1960 data, to be appropriate.

With respect to the Louisiana pipeline franchise tax which Southern has protested and not paid, staff included an allowance which will permit Southern to recover more than one-half of the protested amount. Southern, on the other hand, included the full amount of the protested tax, even though only a small portion of the tax was paid. Southern does not, however, take issue with the treatment accorded this item by staff; and in our judgment the allowance made by staff is reasonable and adequate.

The net effect of the adjustments made by staff in Southern's cost of service for these taxes other than income is a reduction of $150,264 in system costs.

F. FEDERAL INCOME TAX

A determination of the proper allowance for federal income tax in Southern's cost of service is contingent upon disposition of three subsidiary issues: (1) The treatment to be accorded Southern for rate-making purposes with respect to the tax benefits associated with liberalized depreciation, statutory percentage depletion, and intangible well drilling expense deductions. (2) The rate of return to be allowed on Southern's production properties, and the treatment of accumulated deferred taxes, both of which will affect the over-all rate of return which Southern will be entitled to earn and the amount of return subject to tax. (3) The rate base to which the rate of return is to be applied. At this point, we shall consider the proper treatment of the tax benefits, this being an issue which bears directly on the method of computing Southern's taxes for rate-making purposes. The issues relating to rate of return and rate base will be discussed separately under those headings.

Both Southern and staff computed the income tax allowance on the basis of straight line depreciation, although Southern in fact has been taking advantage of liberalized depreciation (Internal Revenue Code, Section 167) in paying its taxes. By so normalizing its depreciation deduction in computing the tax allowance in its cost of service, Southern would recover through its rates a sum which is greater than its actual test year tax cost. Under present Commission accounting procedures this difference would be credited to an account for deferred taxes, to be available in future years if under the liberalized depreciation provisions the actual depreciation deduction should be less than the normalized deduction.

A precedent for this treatment of liberalized depreciation was established by the Commission in *El Paso Natural Gas Co.*, 22 FPC 260, 266–267; and until recently, the Commission has consistently followed the practice of normalizing depreciation on a straight line basis in computing cost of service tax allowances.[7] However, we have become increasingly aware of a need for further investigation of the proper use of liberalized depreciation for rate-making purposes. Accordingly, by order issued June 1, 1962, in *Alabama-Tennessee Natural Gas Co.*, Docket No. G–5471, *et al.*, 27 FPC 1063, we have set this question, together with that of the proper treatment of accumulated deferred taxes, for oral argument before the Commission, and have invited all those interested in this problem to participate. Any policy changes resulting from our decision in the *Alabama-Tennessee* case will, of course, have only prospective application; but it is our intention that such changes, if so determined, be given effect on as broad a scale as is possible. Therefore, we shall follow the existing precedent in fixing Southern's rates for the present time, and compute Southern's tax allowance using a straight line depreciation deduction; subject, however, to the condition that Southern's rates shall be adjusted to reflect on a prospective basis any change in policy with respect to the use of liberalized depreciation which may be established by the Commission in *Alabama-Tennessee*.

Turning now to the tax benefits for statutory depletion and intangible well drilling expenses, the issue to be decided is whether the savings in taxes accruing to Southern through the use of these special deductions should be retained by Southern or passed on to its ratepayers. In computing its tax allowance for its cost of service, Southern retains these benefits for itself by using book depletion instead of the statutory percentage depletion, and by taking no deduction for intangible drilling costs. Since its test year taxes were in fact reduced by the special deductions, the tax allowance included in the cost of service is higher

[7] The practice was approved upon review in *El Paso Natural Gas Co.* v. *F.P.C.*, 281 F. 2d 567 (CA5); see also *City of Lexington, et al.* v. *F.P.C.*, 295 F. 2d 109 (CA4).

than the actual taxes paid. Staff, in its cost of service, included statutory depletion and intangible well drilling costs as tax deductions, thereby reducing the tax allowance as computed by Southern by $558,289.

Subsequent to Southern's presentation of its case in the earlier phase of these proceedings, and prior to resumption of hearings in the second phase, the Fifth Circuit Court of Appeals issued its decision in the *El Paso* case,[8] holding that "there is no statutory authority for the Commission to treat actual savings in taxes to which natural gas companies are entitled any differently than savings in any other cost of service." The effect of the court's holding is to require that such savings be passed on to the consuming public.[9] In view of the court's decision, and in recognition of the fact that the Commission has consistently followed this decision in its treatment of the producer tax benefits in cases decided since *El Paso*, Southern does not belabor the issue in this second phase of the proceedings. However, as an alternative to retention of the tax benefits, Southern takes the position that it should be allowed an increment for incentive in rate of return on production properties. This argument is considered in our discussion of rate of return below.

G. RATE OF RETURN

Subject to certain stated reservations, the Commission's order of July 8, 1960, in the first phase of these proceedings, determined the rate of return to be used in fixing Southern's rates.[10] Thus, based on its findings as to Southern's capitalization ratios, cost of debt, and common equity allowance, the Commission determined the fair, just and reasonable rate of return on Southern's pipeline properties to be 6.5 percent. The Commission, however, reserved final judgment on the proper rate of return to be allowed on Southern's production properties,[11] and the related issue just considered, of the treatment of the tax benefits for statutory depletion and intangible well drilling expenses. Also reserved for disposition in this later phase of the proceedings was the question of how to treat Southern's accumulated deferred taxes, the answer to which could affect the rate of return allowed to Southern under the interim order. Apart from these reserved issues, which relate to and may affect Southern's rate of return, the Commission's findings and conclusions in the order of July 8, 1960, are final.

1. *Rate of Return on Production Properties*

Southern originally presented its proposed rates on the basis of an overall rate of return of 7 percent. During the course of the hearings, however, Southern took the alternative position that if it were to be denied the tax benefits for statutory depletion and well drilling expenses as part of the income tax allowance in its cost of service, it should receive a rate of return on its wellmouth production properties increased by at least the equivalent of these benefits. These benefits are equal to 5.33 percent of Southern's production rate base. Not only does Southern claim this additional 5.33 percent return, it further claims

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[8] See note 7, *supra*.

[9] The Fourth Circuit Court of Appeals in the *City of Lexington* case cited in note 7, *supra*, followed the holding in the *El Paso* case, requiring the producer tax savings to be passed along to the ratepayers.

[10] The order of July 8, 1960, was issued in Docket No. G–20509. By order issued July 29, 1960, in Docket No. RP60–15, the same findings with respect to rate of return were made applicable to the latter proceeding, and the two dockets were consolidated for further hearings on Southern's rates.

[11] As determined herein Southern's wellmouth production rate base is $10,618,928, and its pipeline rate base (relating to the balance of its system properties) is $225,407,115.

that it is entitled to the same return as that enjoyed by successful independent producers, which it contends is 16 percent. Staff, and those interveners taking a position with respect thereto, contend that Southern is entitled to no more than the rate of return allowed on its pipeline properties.

In the interim order of July 8, 1960, the Commission stated that the evidence of record at that time did not support a finding that Southern was entitled to a greater rate of return on its production properties than on its pipeline properties.[12] Nothing that has been adduced by way of additional evidence or argument in this second phase of the proceedings convinces us that in the final order Southern should be allowed a rate of return on its production properties greater than that fixed for its pipeline properties.

In urging a higher rate of return on its production properties, Southern cites a need for the discovery of additional gas reserves to meet the increasing demands of the nation. It contends that pipeline companies cannot look solely to the oil industry for an adequate gas supply, since oil is in excess supply and the dropping-off of domestic oil exploration has resulted in a slowdown in the increase of gas reserves. To encourage pipeline companies to integrate their operations vertically through exploration and development of their own reserves, and to justify assumption by them of the greater and ever increasing risks associated therewith, Southern argues that there must be a substantial incentive in the form of a higher return on the investment in exploration and development.[13] Witnesses for Southern testified that this return should be comparable to that earned by successful independent producers, which is approximately 16 percent on invested capital. Southern claims that the benefits of vertical integration to be encouraged by such an allowance are made manifest not only in the acquisition of needed additional reserves, but in the increased flexibility of operations in meeting system demands, the reduced liability of having to pay for gas not taken under purchased gas contracts, and the improved bargaining position available in the purchase of new gas supplies.

It has not yet been demonstrated, either generally or with respect to the particular record before us in this case, that exploration and drilling activities conducted by a pipeline company and integrated with marketing activities of the pipeline involve the same degree of risk as exploration and drilling activities of an independent producer. While it may be true that the drilling of any particular well involves the same risk as to its turning out dry, it is the overall financial risk that we are here concerned with. It is well recognized that a series of dry holes or even a single dry hole may bankrupt an independent producer, and it is equally well recognized that an independent producer who has the misfortune to discover high-cost gas may very easily find it impossible to dispose of such gas at a price which returns more than a small fraction of his costs of discovery and development. Southern, as a regulated pipeline company, is allowed to recover all of its exploration and development costs in its cost of service, in addition to a return on its investment. Furthermore, Southern has a ready market for its production, and considerable supplies of low-cost gas into which it may blend any high-cost gas it may have discovered and developed. That these factors place Southern in a position considerably more favorable than that occupied by a typical independent producer seems both clear and obvious.

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[12] Southern's rate of return of 7 percent on its production properties, as contained in its original filing, was utilized in the interim order only for the purpose of computing refunds and substitute lower rates during the interim period.

[13] In support of this argument Southern cites the *El Paso* and *City of Lexington* cases, note 7 *supra*, where it was held that the Commission must fix a rate which represents "a reasonable return on the investment, including compensation for consumption of the gas and an increment for incentive." (281 F. 2d 573–4; 295 F. 2d 118.)

In addition to the question of comparative risk, Southern contends that there are consumer benefits inherent in its production activities. Southern claims, for example, that the flexibility of having its own production results in a lower cost of gas to consumers. In this connection, Southern argues that an additional element of return is required as an incentive for Southern to expand such activities. The quick answer to this contention is that Southern has failed to demonstrate the existence of any benefits to its jurisdictional customers resulting from its production operations.

In dealing with this same issue in our recent decision in *El Paso Natural Gas Co.*, Opinion No. 366, issued October 19, 1962, in Docket No. G–4769, *et al.*, 28 FPC 688, we found that El Paso had not proved that an added element of return was needed as an incentive to continue its production activities. In a statement that is equally applicable here, we said:

> If El Paso's production activities result in lower overall costs and thus lower rates to its consumers, it has every reason to continue such operations in the normal course of the prudent, business-like operation of its system (p. 697).

Furthermore as in El Paso, there has been no clear demonstration here of such benefits to the company's jurisdictional customers. Certainly, in the absence of such a demonstration, there is no basis for an additional charge to Southern's customers through an added allowance for return on its production activities. The criteria applied by us in the *El Paso* case in rejecting the company's proposal for such an additional allowance for incentive govern the disposition of this issue here; and the findings there made with respect to El Paso may be made on the present record with respect to Southern:

> For example, no evidence has been presented which shows the effect of all of El Paso's production activities is to reduce its overall gas costs for its present pipeline customers to the lowest possible level, or in fact any showing as to whether the gas attached to its system gives its pipeline consumers an equitable portion of El Paso's lowest cost production. El Paso has made no showing of how much of the additional reserves it acquires will be dedicated to its pipeline customers. There is no evidence to show what part of its reserves El Paso may hold off the market for speculative purposes, may transfer to others, or may use for off-system sales, with perhaps a less than proportionate benefit to its pipeline consumers who supplied the funds with which the necessary preliminary exploration activities were conducted (p. 697).

In general it would warrant allowance of an additional return on production property if a pipeline made two showings. First it must demonstrate that the production activity is being carried on for the sole purpose of supplying gas to its pipeline customers. This requirement cannot be fulfilled by mere statements of intention, but must rest upon the history of the pipeline production operations and the commitments the pipeline has made by practical dedication of its production properties to pipeline service. It should not need argument to support the conclusion that if a pipeline is engaging in production operations for the benefit of groups other than its customers, the customers should not be paying a premium return on the production property.

A second essential showing is that the production operation has been so conducted that it is or will be of practical economic advantage to the pipeline's customers. A pipeline whose production properties make no demonstrable contribution to reduction of costs or improvement of service is likewise in no position to demand a premium return on its production investment.

In *El Paso* we discussed the question whether production operations of a large pipeline system involve additional risk for which it should be compensated.

This is indeed a factor, but we emphasize that there can be no reward supplied by a pipeline's customers for risk which is not incurred in a successful effort to improve the economics of pipeline gas supply. The risk factor, we conclude, is not determinative, but rather the key question is whether the consumers can equitably be asked to provide an additional element of return on account of production investment. Before this Commission could recognize an equitable obligation to allow such additional compensation, we would require a record showing that the production operations were, in practical effect, a benefit to consumers.

On the record presented in these proceedings, Southern has failed to justify a return on its wellmouth properties any higher than that fixed for its pipeline properties.

2. Accumulated Deferred Taxes

In the interim order of July 8, 1960, the Commission in computing Southern's rate of return did not include in the company's capital structure the accumulated deferred taxes of $14,975,000 shown on its consolidated balance sheet. As noted above, however, the Commission reserved judgment on the disposition of this item until this second phase of the proceedings. Southern contends that the treatment of this item in computing the interim rate of return was correct and should be adhered to. Staff, on the other hand, contends that in accordance with the Commission's decision in *Northern Natural Gas Co.*, 25 FPC 431 (1961), the accumulated deferred taxes should be included in Southern's capitalization at an allowance of 1.5 percent. The interveners take the position that the deferred taxes should either be deducted from Southern's rate base or treated in its capitalization as interest-free debt.

As we indicated earlier in this opinion in our discussion of the tax benefits associated with the use of liberalized depreciation,[14] we have decided to reexamine for the future both the question of the tax treatment of liberalized depreciation and the allowance on deferred taxes in computing rate of return. As noted, these questions have been set for oral argument and disposition in *Alabama-Tennessee Natural Gas Co.*, Docket No. G-5471, *et al.* By our order issued June 1, 1962, in the *Alabama-Tennessee* proceedings, we decided to use the 1.5 percent allowance on deferred taxes used in the *Northern Natural* case pending any change in policy on this issue.[15] We shall adopt the same procedure here. Accordingly, we shall compute Southern's rate of return on the basis of an allowance of 1.5 percent on accumulated deferred taxes; subject, however, to the condition that Southern's rate of return and the rates herein determined shall be adjusted to reflect on a prospective basis any change in policy with respect to the treatment of accumulated deferred taxes which may be established by the Commission in *Alabama-Tennessee.*

H. RATE BASE

Except for the working capital component, Southern and staff utilized the same rate base in their cost of service studies for the purpose of computing Southern's allowable return. The difference in working capital, amounting to $1,513,820, results from staff's adjustment of the federal income tax and various operating expense items in Southern's cost of service, as discussed above. In finally computing Southern's cost of service, we shall conform the working

[14] See pages 334–335, *supra.*

[15] We recognize our right to grant a 1.5 percent rate of return on deferred taxes has been questioned, and we are seeking further review thereof. In the meantime we are adhering to our prior disposition. *Panhandle Eastern Pipe Line Co.* v. *F.P.C.* (CADC, September 27, 1962), [rehearing *en banc* granted November 23, 1962; the court decision of September 27 was withdrawn on March 15, 1963 and a new decision entered affirming the FPC ruling; 316 F. 2d 659].

capital component of the company's rate base to the tax and operating expense allowances herein approved.

We have already referred to the contention of certain of the interveners that accumulated deferred taxes should be deducted from the rate base. Apart from this contention, discussed and decided above, the interveners have proposed two changes in the rate base shown by Southern and staff. The first of these would exclude the cost of undeveloped acreage held for future exploration and development. The second would reverse a transfer of some $6,600,000 from Southern's depreciation reserve made pursuant to an order of the Commission issued March 30, 1946, in Docket No. G–479, 5 FPC 427.

Georgia Textile Manufacturers Association, Inc. and Georgia Industrial Gas Users Association (jointly referred to as Georgia Industries) contend that certain non-producing, unproved acreage, held by Southern for future exploration and development should be eliminated from the rate base. Georgia Industries' contention is based on the fact that it is not presently known whether the acreage so held will produce gas or oil, or whether the gas produced will be in sufficient quantities to make its connection to Southern's system economically feasible. These arguments are not new to the Commission, and as a matter of policy the Commission has included such plant held for future use in rate base from the outset of its regulation of pipeline rates.[16] The purchase of undeveloped leases is a necessary part of Southern's exploration and development program related to its current efforts to maintain supplies of gas, and the leases so held for future development are properly included in Southern's rate base as plant held for future use.

There is no substance to Georgia Industries' charge that all of the investment in untested acreage was allocated to Southern's gas plant, without any effort to allocate a part thereof to its oil operations. The record shows that Southern allocated its adjusted production plant held for future use as follows:

		Percent
System gas	$1,831,512	55.9261
Off-system gas	261,453	7.9836
Oil operations	1,181,913	36.0903
Total	3,274,878	100.00

This allocation is based on Southern's investment in existing developed reserves. Southern's figures and allocation method were utilized by staff. There is no evidence to dispute their reasonableness, and we adopt them here for the purpose of computing Southern's rate base.

Atlanta Gas Light Company (Atlanta Gas) and Georgia Industries contend that Southern's rate base is overstated by reason of a transfer of $6,668,133.70 from its depreciation reserve pursuant to an order of the Commission which they claim was in error. The Commission's order, issued March 30, 1946, in Docket No. G–479,[17] a rate investigation under Section 5(a) of the Act, provided for a reduction in Southern's plant accounts on the basis of an original cost determination, and for the elimination of excessive wartime depreciation accruals from Southern's reserve for depreciation by transferring the excess in part to surplus and in part to a special reserve sufficient to absorb the excess in the plant accounts over original cost.[18] In support of its contention

[16] See *City of Cleveland* v. *Hope Natural Gas Co.*, 3 FPC 150, 174 (1942), and more recently, Opinion No. 326 in *El Paso Natural Gas Co.*, 22 FPC 260, 269 (1959).

[17] 5 FPC 427.

[18] Of the amount authorized to be transferred, Southern placed $721,741.53 in the special reserve to absorb original cost adjustments and $5,946,392.17 was transferred to surplus.

that this action of the Commission was in error, the interveners cite the dissent of one Commissioner in that case.

The transfer of reserves in Docket No. G–479 was made for the purpose of correcting a material error in accounting, which resulted in the excessive accrual of depreciation on wartime facilities. Although one Commissioner dissented to the action of the Commission in that case, there has been no showing in the present case to convince us that the action of the majority in authorizing the transfer of reserves to correct this error was unjustified.

There is no evidence of record to support the interveners' contention that by reason of the transfer of reserves authorized in Docket No. G–479 Southern's customers are being double-charged for the excess depreciation accruals. Prior to Docket No. G–479 Southern's rates were determined by private negotiations and not by cost of service; and although the Commission in Docket No. G–479 found Southern's revenues for 1945 to be $1,200,000 too high, there is no way of relating this excess in revenues to Southern's accounting practices with respect to the depreciation of wartime facilities. Clearly Southern has not been allowed to recover the excess depreciation accruals as part of any cost of service determination made by the Commission.

We can find no basis in the record before us for overturning the Commission's determination in Docket No. G–479, the very purpose of which was to permit the use of Southern's book figures in computing its rate base.

Southern's adjusted system rate base as herein determined is $236,026,043. The return to be allowed Southern on this rate base is $14,728,025.[19]

I. COST OF SERVICE SUMMARY

On the basis of the foregoing disposition of the issues relating thereto, we find Southern's overall system cost of service to be $124,003,057, as set forth in Appendix A attached hereto.

IV

Allocation of Costs

Having determined Southern's overall system cost of service, it is next necessary to decide what portion of Southern's cost of service is properly allocable to its jurisdictional sales, and what portion is allocable to its nonjurisdictional sales. We must also decide how the jurisdictional costs should be divided between Southern's various service zones. These allocations are required to determine the costs to be used as a basis for the design of just and reasonable rates applicable to jurisdictional sales in each of Southern's zones.

Since the allocation of costs relating to service on peak days is basically a function of demand or peak-day volumes, while the allocation of costs relating to off-peak service is basically a function of commodity volumes delivered annually, it is necessary as a preliminary to the allocation of costs to first classify the various items of cost as relating to demand or to commodity. Also, where as here the parties propose to weight the volumes of gas with a mileage factor for the purpose of allocating transmission costs as opposed to production costs, it is necessary to segregate such costs in making the allocations.

Thus the process of allocation in this case involves the following steps: The segregation of costs as production costs and transmission costs. The classification of the items of cost in each of these categories as demand or commodity. The allocation of demand costs to jurisdictional and nonjurisdictional sales on

[19] This return is computed on the basis of an overall rate of return of 6.24 percent, which reflects a weighted average allowance of 6.5 percent on debt and equity capital and an allowance of 1.5 percent on accumulated deferred taxes.

the basis of peak responsibility, using volumes alone to allocate production demand costs and volumes weighted by mileage to allocate transmission demand costs. The allocation of commodity costs to jurisdictional and nonjurisdictional sales on the basis of annual volumes, using volumes alone to allocate production commodity costs and volumes weighted by mileage to allocate transmission commodity costs. The allocation between zones of jurisdictional demand costs and jurisdictional commodity costs on the aforesaid basis of peak responsibility and annual volumes, using Mcf-miles for transmission costs, or on a historical revenue basis as urged by Southern, or on some combination basis such as proposed by staff.

The allocation issues here presented relate to the classification of production costs as demand or commodity costs, the determination of peak responsibility to be used in allocating demand costs, the computation of a mileage factor to be applied in the allocation of transmission costs, and the method of allocating jurisdictional costs to Southern's three zones. Also to be considered is the "Annual Capacity" method of classification and allocation proposed by one of the interveners.

A. *Classification of costs to demand and commodity*

In classifying costs as demand or commodity costs, Southern generally followed the principles of classification laid down by the Commission in *Atlantic Seaboard Corp.* (Opinion No. 225), 11 FPC 43, and *Northern Natural Gas Co.* (Opinion No. 228), 11 FPC 123, and commonly referred to as the *Atlantic Seaboard* method of classification. Broadly speaking the *Atlantic Seaboard* method requires the following classification: Transmission costs which are fixed or relate primarily to pipeline capacity are classified 50 percent as demand and 50 percent as commodity. Transmission costs which are not constant and vary in proportion to the volume of gas transmitted are classified 100 percent as commodity. Natural gas production costs, except that portion of purchased gas costs billed as demand, are classified wholly as commodity costs. Purchased gas costs billed as demand and manufactured gas costs are classified as demand costs.

Southern, however, departed from the *Atlantic Seaboard* method in its classification of natural gas production costs. Southern assigned all fixed natural gas production costs, other than those included in the cost of purchased gas, one-half to demand and one-half to commodity. And although Southern adhered to *Atlantic Seaboard* in classifying purchased gas costs, its witness testified on cross-examination that since presenting Southern's direct case the competitive position of gas sold for interruptible industrial use had so deteriorated that he was then of the opinion that it would be fairer to assign at least 25 percent of those costs to demand. Southern argues for such a classification of purchased gas costs in its brief, and as an appendix thereto presents its computation of the 25 percent classification together with schedules showing the classification and allocation of its system costs adjusted accordingly. Staff and Alabama Gas Corporation (Alabama Gas), which also introduced classification and allocation exhibits or testimony in this record, have utilized or accepted the *Atlantic Seaboard* method with respect to the classification of production costs. Georgia Industries, whose witness sponsored the "Annual Capacity" method of classification and allocation referred to above, would in effect classify all fixed costs as demand and all variable costs as commodity.[20]

[20] Georgia Industries' witness used classifications of "fixed" and "variable" rather than "demand" and "commodity". He used the total of fixed costs as the basis for allocating capacity charges, and the total of variable costs as the basis for allocating commodity charges. These allocations were made by the "Annual Capacity" method discussed at a later point in this opinion.

Our consideration of this and other cases in terms of current economic factors leads us to believe that a classification different from that determined in *Atlantic Seaboard* and *Northern Natural* might be appropriate. The classification used in *Atlantic Seaboard* was adopted because it was considered to be an acceptable method of distributing costs among the classes of customers of a certain pipeline, giving account to the operating characteristics of the pipeline involved. The decision in that case did not purport to establish a rigid mathematical classification methodology which would be applied, without exception, in all future pipeline rate cases. To the contrary, that decision set forth at some length the Commission's views regarding the method of cost classification selected " . . . so that all may be informed and guided in situations, which may be substantially similar to the conditions here present." (11 FPC 43, 53)

It is not surprising therefore, that the fairly universal use of the *Atlantic Seaboard* method of classification in pipeline rate cases has been the subject of increasing criticism. A recent article in the *Public Utilities Fortnightly*,[21] for example, compares the operating characteristics of Atlantic Seaboard Corporation at the time its rate case was decided, with the significantly different characteristics of many pipelines today. The article suggests that application of the *Atlantic Seaboard* formula today tends to make additional underground storage uneconomic and discourages economic use of a pipeline's facilities. While criticisms such as these may have merit, it should be noted that the Commission has not slavishly followed *Atlantic Seaboard* but has made adjustments in individual cases in the area of rate design in order to achieve a reasonable and just result. While this procedure may not satisfy the rate purists, it does serve to treat the pertinent economic factors involved. This should not be interpreted to mean, however, that we are completely satisfied with the *Atlantic Seaboard* method of classification, and are not open to make appropriate adjustment on a case by case basis.

It is apparent, however, that any deviation from the principles established in *Atlantic Seaboard* and *Northern Natural* could have a tremendous impact on the pipeline involved and upon all of its customers and ultimate consumers. Accordingly, we are convinced that any fundamental change in classification should be made only when all the parties to a proceeding have focused on this matter and have had full opportunity to contest any deviation suggested.

Turning now to this case, we are unable to find any factual basis which would justify a departure from the *Atlantic Seaboard* method of classification. As mentioned above, most of the classifications introduced herein conform to historic Commission policy.[22] Southern did propose a classification of production costs based on a determination of the fixed and variable costs involved. However, we consider it imprudent to deviate from the historic classification of production costs in the absence of a full record with respect to the classification of purchased gas costs.[23] We believe that there could be a fundamental relationship between the classifcation of production costs and the classification of purchased gas costs, which would preclude a determination of the classification of either on an independent basis. Moreover, Southern supports its recommended classification in part upon its contention that its production absorbs part of the swings in loads. The record, however, does not show that Southern takes the swings on its own production to an extent greater than under its purchased gas contracts.

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[21] "How Practical Is The Seaboard Formula", *Public Utilities Fortnightly*, Vol. 71, No. 1, Jan. 3, 1963.

[22] We are not now convinced that the classification of fixed and variable suggested by Georgia Industries is appropriate. In our opinion, it is equitable to assign at least a portion of fixed costs to commodity for the reasons stated in *Atlantic Seaboard*.

[23] Only upon cross-examination did Southern suggest a classification of purchased gas costs at variance with *Atlantic Seaboard* principles.

Accordingly, we shall follow the *Atlantic Seaboard* method of cost classification in this proceeding.

B. *Peak responsibility to be used in allocating demand costs*

Southern has historically followed the practice in its rate increase filings with the Commission of allocating demand costs between jurisdictional and nonjurisdictional sales on the basis of its system design peak. This is the basis of Southern's allocation in the present case, in which it has used the contract requirements of its customers as the measure of peak responsibility for the winter of 1959–1960, rather than actual deliveries during an experienced peak. Such contract requirements for the test period reflected by the company's exhibits were 1,194,709 Mcf for jurisdictional sales, and 30,691 for firm nonjurisdictional sales. With the design daily capacity of its expanded system 1,365,000 Mcf, there was an excess unassigned capacity of 139,600 Mcf. For the purposes of its allocation, Southern assigned half of this excess to jurisdictional sales and half to nonjurisdictional sales. Thus Southern allocated its demand costs on the basis of a design daily capacity of 1,365,000 Mcf, of which 1,264,509 Mcf was assigned to jurisdictional sales and 100,491 to Mcf to nonjurisdictional sales.

Although the Commission has consistently adhered to a practice of allocating such costs on the basis of actual deliveries during an experienced peak—usually the three consecutive days of maximum system deliveries, staff in these proceedings made its allocation on the basis of adjusted peak day sales which are the same as those derived by Southern under the design peak method. Use of these design peak sales figures for the allocation of Southern's demand costs is supported by the Zone 3 interveners. Alabama Gas Corporation, on the other hand, presented an allocation based on actual deliveries by Southern during the three-day peak period of January 19, 20 and 21, 1960. Use of the three-day peak period sales is supported by other Zone 2 interveners.[24] Since Southern's jurisdictional customers during the three-day peak took a larger proportion of total deliveries than were assigned to jurisdictional sales by Southern and staff, and since Zone 3 customers on those days took a larger proportion of jurisdictional sales than reflected in Southern's and staff's allocation, the effect of using the three-day peak would be to assign less of the demand costs to Southern's direct nonjurisdictional sales as well as less to jurisdictional sales in Zones 1 and 2.

In our opinion, the facts of this case justify a departure from our general practice of using actual deliveries during an experienced peak period as the measure of peak responsibility for the allocation of demand costs; and they amply support the use, in this instance, of the adjusted peak day deliveries based on the contractual requirements of Southern's customers, as employed by Southern and staff.

As previously noted with approval, both Southern and staff, in determining annual volumes, used adjusted test year sales figures representing projections or estimates for the year 1960, which was the first full year of operation by Southern following its system expansion. It is reasonable and proper that the peak day sales volumes to be used in allocating demand costs should be coordinated with these estimated annual volumes which are the basis of the allocation of commodity costs. In our judgment, use of the design peak deliveries based on Southern's contractual requirements will, under the special circumstances of this case, best serve to bring the allocation of demand costs into reasonable

[24] At the time Southern prepared and served its direct case, it had not experienced a system peak with its expanded 1,365,000 Mcf capacity system, and no total of experienced sales for the winter of 1959–1960 was available.

relationship with the allocation of commodity costs, and to present a representative picture of the anticipated use of Southern's expanded system.

The record shows that during the three-day peak experienced in January 1960, Southern delivered an average total of 1,403,277 Mcf—an excess of 38,277 Mcf over design, and 177,877 Mcf over its firm system requirements. Of the total excess of 177,877 Mcf 139,003 Mcf represents excess over contract demands delivered to jurisdictional customers, and 38,874 Mcf represents excess over firm requirements delivered to nonjurisdictional customers. The record further shows that on January 7, 1960, prior to the peak period, the total of system sales was 1,424,990—an excess of 199,590 Mcf over system requirements, of which 84,273 Mcf represents deliveries to jurisdictional customers in excess of their contract demands, and 115,317 Mcf represents excess deliveries to nonjurisdictional customers. Again after the peak period, on January 24, 1960, the total of system sales exceeded total average deliveries during the peak period. The total on that date was 1,431,652 Mcf—an excess over system requirements of 206,252 Mcf, representing an excess over contract demands of 121,102 Mcf to jurisdictional customers, and an excess over firm requirements of 85,150 Mcf to nonjurisdictional customers. These figures reflect the unusual nature of Southern's operations, and further show the unreliability of the three-day peak period sales as a true measure of peak responsibility in this case.

As one of Southern's witnesses noted, Southern's sales are made in a relatively warm part of the country where sustained periods of cold weather are unusual. Consequently, Southern's operations are to a great extent dependent upon interruptible sales for industrial use, both direct and by its resale customers. Under its tariff, Southern's resale customers are permitted to run wide open, taking all the gas they might need so long as it is available. This explains the above-noted deliveries of excess gas on an interruptible basis to Southern's jurisdictional customers, both off and on peak. Because of the nature of its system, and the problems involved in the scheduling of excess gas for its direct and jurisdictional customers, Southern allocates a greater portion of this interruptible gas to its jurisdictional customers during periods of peak domestic and commercial demand, as indicated. And although its tariff provides that there shall not be discrimination between the various classes of service in the allocation of excess gas, deliveries of such gas can be balanced out, as a practical matter, only over a broad period, and not on a daily basis. Under these circumstances, the assignment of excess capacity in Southern's system half to jurisdictional and half to nonjurisdictional, as made by Southern and staff, is reasonable and proper; and we conclude that the use of contract requirements rather than actual peak period deliveries is to be preferred as a measure of peak responsibility in this case.

C. *Allocation of transmission costs to jurisdictional sales*

In allocating transmission costs between jurisdictional and nonjurisdictional sales, Southern utilized a mileage factor to weight the peak and annual volumes used as the basis of the allocation. This mileage factor was determined by a study of the flow of gas through Southern's system from points of supply to points of delivery and the computation therefrom of the weighted average mileage for peak and annual volumes transported by Southern to each point of delivery. This Mcf-mile method of allocation, with some variations, was used by all of the parties presenting allocation witnesses in these proceedings. The basic method is that established by the Commission in *Northern Natural Gas Co.*, Opinion No. 281, 14 FPC 11, and followed in *Kansas-Nebraska Natural Gas Co.*, Opinion No. 343, 25 FPC 448, and in *Tennessee Gas Transmission Co.*,

Opinion No. 352, issued February 6, 1962, 27 FPC 202. Although most of the Zone 3 interveners have in their briefs taken a position contrary to that presented by all four allocation witnesses, and argue for a system-wide, volumetric allocation of costs, there is no substantial basis in this record for a departure from the Mcf-mile method. Southern makes both jurisdictional and nonjurisdictional sales from all portions of its system, and there are no circumstances here presented which outweigh the importance of the distance factor in making a fair allocation of the costs of transmission.

Although all four allocation witnesses who testified in these proceedings utilized the Mcf-mile method in allocating transmission costs, there was a division of opinion as to how the demand and commodity miles should be computed. Southern took the position that its North and South lines, which are interconnected by three branch lines, should be treated as though they were a single looped transmission line, and that all of its gas supply should be treated as though it were completely commingled at Kosciusko, Mississippi, and Gwinville, Mississippi, the last points on the North and South lines, respectively, where gas is delivered into Southern's system. Southern took this position because from these two points its dispatchers have considerable flexibility in dispatching gas through its system to points of delivery on either the North or South lines, and because there is no fixed pattern for the flow of gas from its sources of supply to the various points of delivery on the two lines. To account for this mode of operation, Southern averaged the mileages at Kosciusko and Gwinville for gas from all sources tributary to those two points, and then took the mean of those two average mileages as a common base for the computation of mileages to all points of delivery on its system east of Kosciusko and Gwinville. Alabama Gas' allocation witness supported the use of the rolled-in mean of average miles west of Kosciusko and Gwinville as presented by Southern's witness.

Staff, on the other hand, computed demand miles and commodity miles on a flow-through basis, in accordance with the procedure usually followed by the Commission in applying the Mcf-mile method of allocation. Thus staff's witness treated the mileages at Kosciusko and Gwinville no differently that the mileages at any other points on Southern's system. Georgia Industries' witness used staff's computation of Mcf-miles in allocating costs by his "Annual Capacity" method.

The effect of rolling in all mileages west of Koskiusco and Gwinville on a weighted average basis, rather than treating such mileages the same as mileages on the rest of Southern's system, is to shift costs from nonjurisdictional sales to jurisdictional sales. Furthermore, to the extent that Mcf-miles are used in allocating jurisdictional costs to Southern's zones, the effect is to decrease such costs in Zones 1 and 2 and to increase the costs in Zone 3.

We recognize that Southern's dispatchers have a certain amount of choice in determining the flow of gas in Southern's system, and that the flow can be varied because of the interconnections between the North and South lines. We are not convinced, however, that the actual flow pattern established for the test year and for the peak period in January 1960, and utilized by staff in its computations, is so unreprestative of the flow of gas in Southern's system as to require a departure from our practice of determining Mcf-miles on the basis of actual flow-through.[25] Furthermore, 11 of Southern's 23 delivery points in Zone 1 are west of Kosciusko on its North line, and there is no substantial justification for not computing the Mcf-miles for deliveries to these points on

[25] Despite the discretion of its dispatchers, Southern found its flow pattern sufficiently representative to permit it to compute all mileages east of Kosciusko and Gwinville on a flow-through basis.

the same basis as the deliveries to points east of Kosciusko. We cannot accept Southern's characterization of the impact of ignoring these sales between Perryville, Louisiana and Kosciusko as "insignificant". It is our judgment that the demand miles and commodity miles as computed by staff in accordance with actual flow to all points of delivery provide a proper basis for the allocation of transmission costs in this case.

Another problem in computing demand and commodity miles arises from the fact that Southern purchases large quantities of gas from United Gas Pipe Line Company at Perryville, Louisiana, and Kosciusko, Mississippi. Southern gave no recognition to the distance traveled by this gas on United's system in making its Mcf-mile allocation of transmission costs since the entire cost of the United gas, including that part relating to transmission, was included in its cost of service as a cost of production. Alabama Gas' witness followed Southern in assigning zero miles to the United gas at Perryville and Kosciusko. Staff, on the other hand, imputed mileage to the United purchases, even though it included none of the transmission costs associated therewith as part of Southern's transmission costs to be allocated. Georgia Industries' witness followed staff in imputing mileage to the United gas, but he sought to estimate that part of the cost of the United gas representing the cost of transmission and transferred it from Southern's production costs to its transmission costs before making his allocation.

The effect of excluding the mileage imputed by staff to the United purchases is similar to that which results from rolling in the mileages on Southern's system west of Kosciusko and Gwinville. The effect is to shift costs from nonjurisdictional sales to jurisdictional sales; and further, to the extent that the same method is used to allocate jurisdictional costs between zones, the effect is to decrease costs in Zones 1 and 2 and to increase costs in Zone 3.

Staff's allocation witness admitted that the imputation of mileage to these purchases, while including the transportation costs associated therewith under production rather than transmission, is not an ideal way of handling the allocation; but that it is nevertheless the most reasonable under the circumstances presented in this case. Ideally, the portion of the cost of the United gas relating to transmission should be separated out and broken down between demand and commodity, and as so classified should be included in Southern's transmission costs for the purpose of allocating them on the Mcf-mile basis. However, the data necessary for breaking down the cost of the United gas in this way was not available to staff's witness in this case, and he could find no reasonable basis for estimating the cost of transportation on the United system. He nevertheless concluded, and we agree, that an assignment of mileage to the volumes delivered to Southern by United at Kosciusko and Perryville should be made to avoid a distortion in the allocation for which there is no justification. This distortion, which arises from the allocation of the entire cost of the United gas as a cost of production on the basis of volumes alone, even though a part of it is in fact transmission cost which should be allocated on the basis of Mcf-miles, can at least be partially offset in the allocation of Southern's transmission costs by including in the computation of demand and commodity miles the miles associated with the volumes purchased from United. The allocation should reflect as closely as possible the mileage which properly relates to the transportation of the gas from its source to the various points of delivery on Southern's system, duly weighted to give recognition to the volumes of gas delivered to each of such points.

It is objected that staff, in imputing mileage to the United purchases, used mileages which were unrelated to actual mileages on United's system. Ideally,

staff's imputation should have been based on the actual miles of transportation on United's system related to the cost of transmission included in its rates to Southern; but, as in the case of the cost of transmission, such data with respect to mileage was not available to staff's witness in making his allocation study for this case. He used, instead, mileages representative of Southern's system, which he knew to be less than United's mileages. Thus, on the basis of the weighted average distance which gas purchased by Southern from all other sources of supply traveled over Southern's own supply system, staff's witness attributed 133.11 demand miles and 128.49 commodity miles to the United gas delivered at both Perryville and Kosciusko. In our judgment, this is a reasonable solution to the problem of allocating costs to the United gas on a mileage basis in the absence of more specific data with respect to United's operations, and we shall accept it for the purpose of determining Southern's rates in these proceedings. However, our approval of staff's treatment of United's transmission costs and its method of imputing mileage to the United gas in this case should not be construed as constituting a precedent to be followed in future cases. In our discussion above, we have indicated the methods ideally to be employed in the treatment of the transmission costs and mileage associated with the purchase of gas from United, and it is our expectation that the parties in subsequent cases will develop on the record the facts which are necessary to permit the allocation of costs consistent therewith.

D. *Allocation of Jurisdictional costs to zones*

There is a sharp division of opinion among the various parties to these proceedings as to how Southern's jurisdictional costs should be allocated to Southern's zones. Such an allocation is essential to the design of rates for each of the zones, and is determinative of the total costs to be returned through such rates by jurisdictional customers in each zone.

Although Southern allocated total system costs between jurisdictional and nonjurisdictional sales on the basis of the Mcf-mile method, using volumes to allocate production costs and volumes weighted by miles to allocate transmission costs, it departed from this method in allocating the resulting jurisdictional costs to its rate zones. Instead, it used a historical revenue method under which it allocated such costs in proportion to the revenues which would have been produced by the application of its prior effective rates to the test year jurisdictional sales in each zone. By this method, each rate zone would bear approximately the same percentage increase in revenues to be returned.

In support of this method of allocation, Southern points out that the preservation of historical rate differentials between zones and the allocation of approximately equal percentage increases to each of the zones are consistent with Southern's rate history going back to its first rate case in 1946, and that Southern's rates historically have given substantial weight to the distance factor. Southern further notes, and its allocation witness so testified, that had these historical relationships been ignored, and its jurisdictional costs been allocated on the Mcf-mile method, a much greater percentage of increase would have been allocated to Zone 3 than to Zone 2, with the result that rates in Zone 3 would have been so increased as to price large quantities of gas out of the industrial market. A substantial loss of sales in Zone 3 would have the effect of causing Southern to seek a further increase in rates which, in turn, would result in a further loss of sales, thus causing a spiral of increased rates on Southern's system.

Staff's allocation witness presented an allocation of jurisdictional costs to zones on the Mcf-mile method. This is the method of allocation which the

Commission used as a basis for its determination of zone rates in the *Northern Natural*, *Kansas-Nebraska*, and *Tennessee* cases cited above. However, as in those cases, where the Commission did not prescribe zone differentials in strict reliance on the Mcf-mile allocations but gave weight to historical factors as well, staff's rate design witness in this case modified the Mcf-mile cost allocation so as to avoid an abrupt departure from established historical revenue patterns. Thus, in arriving at the zone allocations to be used in designing Southern's rates, staff allocated production costs by volumes, and transmission costs 50 percent by Mcf-miles and 50 percent on the basis of the historical revenue pattern established in Docket No. G–13258, Southern's last rate settlement case (19 FPC 565).

Both Alabama Gas and Georgia Industries would use Mcf-miles in allocating transmission costs to zones, Alabama Gas adhering strictly to the Mcf-mile method, and Georgia Industries adding the annual capacity factor employed under its "Annual Capacity" method discussed hereafter. The positions taken by other interveners reflect their geographical interests, the Zone 3 interveners in general supporting the historical revenue method employed by Southern, and the Zone 2 interveners supporting the straight Mcf-mile method utilized by Alabama Gas.

We have already found that the Mcf-mile method of allocation best gives recognition to the distance of transmission required to effect deliveries at the various points of sale on Southern's system, and have approved its use herein with respect to the allocation of system costs to jurisdictional and nonjurisdictional sales. Consistency would argue for the use of this same allocation procedure in assigning jurisdictional costs to Southern's zones, and we have no doubt but that the application of the Mcf-mile method to Southern's jurisdictional costs would result in an allocation which reflects with reasonable accuracy the relative cost of providing service to its jurisdictional customers in each zone. However, the impact of the straight Mcf-mile method of allocation, in terms of its effect on Southern's markets, would be too severe, in our opinion, to justify its use in this case and at this time without some modification giving recognition to the historical pattern of revenues which has heretofore been developed through Southern's various rate settlements. Precedent for such modification by the weighting of Mcf-mile costs with historical considerations, when first applying the Mcf-mile method of allocation to a zone rate structure, is found in the cases cited above. The allocation of transmission costs 50 percent on the basis of Mcf-miles and 50 percent on the basis of historical revenues, as recommended by staff, was employed by us in the *Tennessee* case, Opinion No. 352, cited; and in our judgment this represents a fair and reasonable means of adjusting the costs in Southern's zones in the present case so as to avoid undue disruption of established marketing patterns.

The economic factors justifying such an adjustment of the costs which would otherwise be allocated to each zone under the Mcf-mile method are well documented in the record before us. Southern serves an area of the United States which does not experience prolonged periods of cold weather, and consequently has a high percentage of sales for industrial use, either directly or through its resale customers, to balance its firm loads for domestic and commercial use. Approximately 50 percent of Southern's jurisdictional deliveries are for resale to industrial customers, with residential and commercial firm loads operating at about 30 percent annual load factor. Of its total system deliveries, approximately 25 percent is sold directly to industrial customers, the bulk of such sales being on an interruptible basis. Economic

operation of Southern's system requires the maintenance of these industrial loads,[26] which have been built up on the basis of the rate patterns heretofore evolved through a series of rate settlements approved by the Commission. During recent years, however, the competitive position of gas with coal on Southern's system has deteriorated due to the increased cost of gas and the availability of lower priced coal. Reduced rail rates for coal transported on a "point-to-point" basis and in discount quantities have caused several electric power companies to turn to coal rather than gas for the operation of steam-electric generating stations. Southern's distributing company customers, especially, have found the competition of coal for their industrial resales increasingly difficult. An abrupt change from historical revenue patterns to rates based on a strict Mcf-mile allocation of costs, under these circumstances, would be unwise. A loss of industrial sales which would result in higher unit costs for firm residential and commercial consumers is to be avoided if possible. At the same time, we cannot disregard the costs involved in serving interruptible industrial customers, and the public interest requires that they should pay a fair share of Southern's cost of service. The 50–50 allocation of transmission costs here adopted represents a move in the direction of rate differentials between Southern's zones which are more truly cost oriented, while preserving enough of the historical relationships between zones to void unwarranted disruption of the marketing patterns which have been developed by Southern and its customers.

E. *The annual capacity method*

Georgia Industries' witness sponsored a method of classification and allocation which is referred to as the "Annual Capacity" method. This method involves a radical departure from *Atlantic Seaboard* in the classification of costs, and introduces an annual capacity factor in weighting volumes and Mcf-miles for the purpose of allocating costs between jurisdictional and nonjurisdictional sales as well as between Southern's rate zones.

In classifying costs under this method, Georgia Industries' witness considered all costs as either variable or fixed, except for return and associated income taxes which he classified 85.56 percent to fixed costs and 14.4 percent to variable costs, and purchased gas cost which he classified in accordance with the manner billed to Southern. Thus, no consideration is given in the classification of costs to the fact that part of the fixed costs properly should be charged to Southern's interruptible customers. Instead, this method seeks to adjust for the necessity of charging a fair portion of fixed cost to interruptible customers by introducing an annual capacity charge to interruptibles in the allocation process. This method assumes that excess capacity on Southern's system is created by reason of the fact that the demand requirements of firm customers exceed their average daily requirements, and that this excess capacity should be paid for by interruptible customers to the extent used by them. Accordingly, the amount of such excess capacity is computed, together with the costs associated with it, and a charge of half of those costs is made against the interruptible customers, with an offsetting credit to the firm customers who created the capacity. Apart from this adjustment, the total of fixed costs, or capacity charges, is allocated on the

[26] The importance of industrial sales to Southern's system operations is heightened by the fact that Southern has no available underground storage facilities. Southern must therefore either market its minimum commitments for purchased gas or pay for gas not taken. During the test year Southern's total volume of purchased gas exceeded its minimum take-or-pay requirements by only 2.3 percent.

basis of annual capacity, which for the allocation of production costs is computed as the peak day deliveries multiplied by 345 days, and for the allocation of transmission costs is computed as the Mcf-miles of peak day deliveries times 345 days. The total of variable costs, or commodity charges, is allocated on the basis of the Mcf-mile method.

There is no substantial justification for a departure from the methods of classification and allocation consistently adhered to by this Commission. The "Annual Capacity" method proposed by Georgia Industries is a novel idea; but, in our judgment, it does not sufficiently reflect the realities of the peak and annual cost responsibilities of Southern's customers, either by class or by geographical location. There are certain obvious shortcomings in its operation and its results which justify its rejection. First, the method erroneously assumes that all of Southern's nonjurisdictional sales are interruptible sales, and that all sales to its jurisdictional customers are firm sales. On the basis of this assumption the excess capacity costs are charged against the nonjurisdictional sales and credited to the jurisdictional sales. Since none of the fixed costs of Southern's operations are included in the commodity charges allocated to Southern's jurisdictional customers, the result is that the interruptible sales to these customers bear none of the responsibility for such charges. To the extent that the commodity charges are thus understated, the demand charges for firm deliveries are overstated, placing an unwarranted burden on domestic and commercial consumers. This result would be especially onerous to low load factor jurisdictional customers.

Further evidence of the fact that the commodity charges developed under the "Annual Capacity" method are unrealistically low is found in a comparison of the commodity rates proposed by Georgia Industries for Southern's three zones with Southern's cost of purchased gas. The commodity rates so proposed are 19.07 cents in Zone 1, 19.43 cents in Zone 2, and 20 cents in Zone 3. The average cost of Southern's purchased gas for the test year was 19.661 cents per Mcf, or 18.539 cents based on the commodity component thereof. The significance of this comparison with purchased gas costs is evident when it is recalled that Southern's own production constitutes only 8 percent of its gas supply, and that the gas which it purchases comprises the bulk of its deliveries throughout the year.

We would also note that we can find no sound basis for assigning different unit costs to jurisdictional and nonjurisdictional sales of the same character and at the same place, as is done by the "Annual Capacity" method with respect to interruptible sales. We would question, too, the appropriateness of Georgia Industries' assumption that the multiplication of the peak day volumes by 345 is a proper measure of annual capacity on Southern's system. In summary, we can discover no substantial justification in the record before us for the procedures followed by Georgia Industries in the application of its "Annual Capacity" method of classifying the allocating costs.

F. *Cost allocation summary*

An allocation of Southern's cost of service, reflecting the disposition herein made of the issues raised with respect to classification and allocation, is set forth in Appendix B attached hereto.

V. Rate Design

Three basic problems are presented in connection with the design of rates for Southern's system. First, is the matter of Southern's zone structure, and the

propriety of the consolidation of Zone 3–A into Zone 3.[27] Second, is the derivation of adjusted zone costs representing the level of revenues to be recovered from Southern's jurisdictional customers in each zone. Third, is the determination of appropriate rates to recover such revenues in each zone.

Southern first applied for a consolidation of Zone 3–A into Zone 3 as part of its application for tariff changes in Docket No. G–18512. The changes so proposed in that prior docket became effective, subject to final determination after hearing, on November 1, 1959. The same three-zone structure was embodied in the subsequent filings in Docket Nos. G–20509 and RP60–15. Southern's customers have presented no substantial objections to the three-zone arrangement, and no alternative plans have been suggested. Staff's rate design witness testified that the proposed zone structure is an improvement over the prior division of Southern's system, even though the consolidation may not produce a perfect three-zone system. Under the circumstances, we shall approve the consolidation as herein proposed, but without prejudice to any later determination by the Commission with respect thereto.

We have already considered the need to adjust the straight Mcf-mile allocation of costs between Southern's various zones so as to give recognition to historical factors in determining the level of revenues to be recovered in each zone. As noted in our discussion of the allocation questions, we are adopting the modification proposed by staff's rate design witness, whereby 50 percent of the transmission costs are allocated by the Mcf-mile method, and 50 percent are allocated on the basis of the historical revenue pattern established in Docket No. G–13258.

The same economic factors cited above as giving justification for the modification of the Mcf-mile method of allocation for the purpose of designing Southern's rates, are applicable in considering the relative levels of demand and commodity charges to be fixed in each zone. All of the parties to this case recognize the importance to Southern's operations of its industrial sales; and realize that a loss of such sales through an increased commodity charge, would permit gas to be replaced by coal for industrial use, would result in higher unit costs for firm residential and commercial users. Although the rates urged by the various parties differ, since they are computed on the basis of differing costs of service, cost classifications, and allocations, it is generally agreed that the commodity component of Southern's contract-demand rates applicable to sales for resale to industry should not exceed the levels proposed by Southern, and presently effective subject to refund, if Southern is to maintain its sales for industrial use in competition with coal. We recognize the need for Southern to maintain its interruptible industrial loads, and the record supports the conclusion that Southern's presently effective commodity charges cannot be increased without inducing a loss of industrial sales. It does not follow, however, that Southern's rates should be designed to retain these sales without regard to the cost of supplying the service rendered. Indeed, these sales should pay a fair share of Southern's costs; and in determining whether to depart from demand and commodity costs as allocated for the purpose of designing rates which will retain the industrial loads, consideration must be given to the correlative impact of such a departure on Southern's firm customers. There is a crossing point—a point where the additional costs to the firm customers which flow from a shift of costs from the commodity component to the demand component, would exceed the additional costs which flow from a loss of sales.

Staff's rate witness worked out contract demand rates for Southern on four bases. These four designs are representative of the designs presented by the

[27] See note 5, *supra*.

various parties to recover the demand and commodity costs allocated to each of Southern's zones.

Basis No. 1. The demand and commodity components of the rates under this basis represent the unit demand and commodity costs for each zone. Under this basis there is a direct translation of allocated demand and commodity costs into rates. As computed by staff on the basis of staff's classification and allocation of costs, the Basis No. 1 CD rates are as follows: Zone 1, $1.15 demand and 22.4 cents commodity; Zone 2, $1.80 demand and 24.32 cents commodity; and Zone 3, $2.10 demand and 26.62 cents commodity.[28]

Basis No. 2. Under this basis, the rates are worked out to reflect historical commodity charge differentials of 1.8 cents between Zones 1 and 2, and 1.3 cents between Zones 2 and 3. The dollar amounts flowing from the change in differentials from the Basis No. 1 rates are included in the demand component. Staff's rates under this basis are: Zone 1, $1.27 demand and 21.68 cents commodity; Zone 2, $1.95 demand and 23.48 cents commodity; and Zone 3, $2.61 demand and 24.78 cents commodity.

Basis No. 3. This basis incorporates Southern's presently effective commodity charges, which Southern claims and we find are the maximum that can be charged without loss of additional sales. The demand charges under this basis represent the difference between the total revenue requirements for each zone and the commodity charges as so set. These rates, as computed by staff, are: Zone 1, $1.51 demand and 20.24 cents commodity; Zone 2, $2.15 demand und 22.37 cents commodity; and Zone 3, $2.92 demand and 23.67 cents commodity.

Basis No. 4. In presenting this basis for the design of Southern's rates, staff offers something new insofar as pipeline rate structure is concerned. This basis involves a two block commodity charge similar to that heretofore used in the electric industry, and a demand charge which is the same as that developed under Basis No. 1. Under this basis, the revenues to be recovered in each zone through the commodity charge equate to the commodity costs as allocated, and the demand revenues similarly equate to the allocated demand costs. The first block of the commodity charge is applicable to a volume of gas equal to the first 10 days' use of monthly billing demand, which is about 33 percent load factor. The second block applies to all gas in excess of 10 days' use. On Southern's system, the industrial sales reflect operations at a load factor in excess of 33 percent, so that the second block applies primarily to gas sold for industrial use. The second block commodity charges are the same as those under Basis No. 3—namely, those proposed by Southern in these proceedings, and presently in effect. The unit charge for the first block of the commodity charge is set at a level which, when added to the charges under the second block, will return Southern's total commodity costs. As presented by staff, these rates are as follows: Zone 1, $1.15 demand, 23.94 cents first block commodity, and 20.24 cents second block commodity; Zone 2, $1.80 demand,

[28] We include staff's computation of the rates under each basis for illustrative purposes only—to show the relative level of the rate components in each zone as they would appear under each method of design, and not necessarily to show the correct computation of the rates under each method. In our judgment the demand and commodity costs to be used as the basis for computing the demand and commodity components of the Basis No. 1 and Basis No. 4 rates properly should reflect the costs as allocated by the 50–50 method discussed above. Since staff's computation of the Basis No. 1 rates reflects commodity costs as determined by a straight Mcf-mile allocaton and total costs as determined by the 50–50 method, and since staff's Basis No. 4 rates utilize the demand charge as determined under Basis No. 1, the rates cited here are not to be relied on as indicating the exact level of the rates which we would compute under these two bases.

25.82 cents first block commodity, and 22.37 cents second block commodity; and Zone 3, $2.10 demand, 31.55 cents first block commodity, and 23.67 cents second block commodity.

Of all of the parties to these proceedings only Georgia Municipal Association recommends the design of rates under either Basis No. 1 or Basis No. 2. Southern and most of the interveners urge the adoption of rates designed in accordance with Basis No. 3. Staff recommends its Basis No. 4. Atlanta Gas and South Atlantic Gas Company, Zone 3 interveners, and Southern's largest and fourth largest customers, respectively, favor Basis No. 3, but would accept Basis No. 4 as an alternative. South Carolina Natural Gas Company, also located in Zone 3, and Southern's third largest customer, supports staff's recommendation for Basis No. 4.

There is little doubt that Southern would lose industrial sales under either Basis No. 1 or Basis No. 2, although the record does not disclose the approximate volumes which would be lost. Even though the dollar effect of such losses on Southern's customers cannot be determined exactly, we are convinced that the adverse impact of increased costs to residential and commercial consumers would be such as to be avoided if at all possible. We turn, therefore, to a consideration of Basis No. 3 and Basis No. 4, under which the commodity charge for industrial sales is set at the maximum which Southern can charge and still retain its interruptible loads. As between these two bases, it is our judgment that the Basis No. 4 rates offer clear-cut advantages from the regulatory viewpoint over the Basis No. 3 rates.

Staff's Basis No. 4 rates were designed so as to preserve the principles of the *Atlantic Seaboard* method of rate-making, while at the same time enabling Southern's distributors to retain their industrial business. The rates represent a reasonable compromise between the divergent interests in these proceedings. The commodity charge applicable to industrial sales is the same under Basis No. 4 as it is under Basis No. 3; yet Basis No. 4 avoids the heavy shift of costs to demand found in the Basis No. 3 rates, which would impose a more severe burden on Southern's low load factor customers. Many of Southern's low load factor customers would obtain lower annual billings under Basis No. 4 than they would under Basis No. 3. Of special importance is the fact that savings to low load factor customers would be greatest during the summer months when they take less than 10 days' use of their billing demands. This is due to the substantially lower demand charge under Basis No. 4.

Although the adoption of rates designed in accordance with Basis No. 4 may require Southern's distributor customers to redesign their retail rates in some instances, we cannot find that this presents any serious obstacle to the effective use of Basis No. 4. In any event, the problems confronting the distributors in their retail rate designs are beyond the scope of this Commission's jurisdiction, and are within the purview of local regulatory bodies.

The exigencies of this case, and the responsibilities reposed in us by the Natural Gas Act, require that we make every effort to adopt a rate design which will retain a relatively high level of industrial sales in Southern's service area, without imposing a larger than necessary share of demand costs on low load factor distributors, and without unduly burdening the residential and commercial customers served by such distributors. We are of the opinion that staff's Basis No. 4 best accomplishes this result.

With respect to Southern's small general service rates, both Georgia Municipal Association and Alabama Municipal Gas Association urge that the increases to be allowed in these rates be computed on an "Mcf" basis rather than on the basis

recommended by staff or Southern. The levels of the G rates which Southern filed were determined by increasing the then effective G rates by the same percentage as the overall system rate increase. Staff proposed G rates determined by increasing the G rates in Docket No. G–13258 by the average percentage increase for each rate zone. The G rates, as computed by Southern and by staff are roughly equivalent to the cost of gas to a CD customer buying at about 40 percent load factor. Since the G customers purchase gas at an average load factor of approximately 25 percent, the preference accorded such customers is apparent. The intervening municipal associations, however, would seek an even greater preference than that contained in the rates as computed by Southern and by staff. They contend that the increase in the G rates in each zone should be the same as the average increase per Mcf for all jurisdictional sales in that zone. On this basis the increased G rates would be equivalent to CD rates at a load factor of 48 percent in Zones 1 and 2, and 76 percent in Zone 3. On the record before us, we can find no substantial justification for allowing an increase in the G rates for each zone less than the percentage increase herein allowed with respect to all of Southern's rates in each zone. The G rates shall therefore be computed in accordance with staff's recommendations.

Attached hereto, as Appendix C, is a summary of Southern's rates in Docket No. RP60–15 reflecting our determinations with respect thereto, as made above. These are the rates which we find to be just and reasonable for the period commencing August 13, 1960, and for the future in that docket. The just and reasonable rates in Docket No. G–20509, for the period June 1, 1960, through August 12, 1960, are those which shall be computed on the same basis as the Docket No. RP60–15 rates in Appendix C, but which reflect the lower cost of gas purchased by Southern from United during that period, as shown in Southern's filing in Docket No. G–20509.

As already noted, the difference in the cost of purchased gas reflected in the rates found to be just and reasonable in each of the instant dockets is based on the increased rates filed by United in Docket No. RP60–2. On June 15, 1961, these United rates were superseded by even high rates filed by United in Docket No. RP61–18. Subsequently, United filed a third increase in Docket No. RP63–1, which was suspended by the Commission until January 1, 1963. Southern has not filed increases in its rates to offset these further increases filed by United. Meanwhile, by order of March 12, 1962, 27 FPC 504, the Commission approved a settlement of United's increased rates in Docket No. RP60–2, ordering refunds to Southern which Southern has in turn refunded to its customers. These refunds covered the period from August 13, 1960, through June 14, 1961. Since the cost of gas purchased from United after June 14, 1961, has been higher than the cost of such gas as reflected in Southern's cost of service in Docket No. RP60–15, and since Southern has absorbed this increase in cost resulting from United's subsequent rate filings, we shall not make any adjustment at this time in Southern's rates in Docket No. RP60–15 to give effect to the United settlement in Docket No. RP60–2. Instead, we shall condition the rates herein found to be just and reasonable so as to require appropriate adjustment and refunds to reflect our disposition of United's rates in Docket Nos. RP61–18 and RP63–1.

The Commission finds:

(1) Southern Natural Gas Company is a natural-gas company subject to the provisions of the Natural Gas Act, and the sales of natural gas for resale which are the subject of this order are sales of natural gas in interstate commerce and are subject to the jurisdiction of the Commission.

(2) The proposed increased rates and charges filed by Southern in Docket No. G–20509 and contained in the Substitute Original Sheets Nos. 5, 9, 12, 16, 19, 23, 27 and 30 to Southern's FPC Gas Tariff, Sixth Revised Volume No. 1, have not been shown to be just and reasonable or otherwise lawful under the provisions of the Natural Gas Act, and should be disallowed.

(3) The proposed increased rates and charges filed by Southern in Docket No. RP60–15 and contained in the Substitute First Revised Sheets Nos. 5, 9, 12, 16, 19, 23, 27 and 30 to Southern's FPC Gas Tariff, Sixth Revised Volume No. 1, have not been shown to be just and reasonable or otherwise lawful under the provisions of the Natural Gas Act, and should be disallowed.

(4) Southern's just and reasonable rates in Docket No. RP60–15 for the period commencing August 13, 1960 and for the future, are the rates set forth in Appendix C, attached hereto; subject, however, to such adjustments as may be required to reflect on a prospective basis the Commission's determinations with respect to liberalized depreciation and accumulated deferred taxes in *Alabama-Tennessee Natural Gas Company*, Docket No. G–5471, *et al.*

(5) Southern's just and reasonable rates in Docket No. G–20509 for the locked-in period from June 1, 1960, through August 12, 1960, are those set forth in Appendix C for Docket No. RP60–15, but adjusted to reflect the lower cost of gas purchased by Southern from United Gas Pipe Line Company during the locked-in period as set forth in its Docket No. G–20509 filing.

(6) Southern should be required to file substitute tariff sheets, subject to the approval of the Commission, containing the rates herein found to be just and reasonable in Docket No. RP60–15 as set forth in paragraph (4) above.

(7) Southern should be required to refund to its jurisdictional customers at 7 percent interest per annum all amounts which it has collected in excess of the amounts herein found to be just and reasonable in each docket as set forth in paragraphs (4) and (5) above.

(8) Southern should be required to refund to its jurisdictional customers the appropriate portion of any refunds which it may receive from United in Docket Nos. RP61–18 and RP63–1, to the extent that such refunds reflect reduced rates in those dockets which are below the rates originally filed by United in Docket No. RP60–2. In addition, Southern should be required to refund to its jurisdictional customers the proportionate part of any refunds received from its producer-suppliers, attributable to gas purchases during the period the Docket Nos. G–20509 and RP60–15 rates were or are in effect, to the extent that such refunds are based on reductions required or approved by the Commission in rates upon which Southern's purchased gas costs were computed in its cost of service in Docket Nos. G–20509 and RP60–15; provided however, that no such refund, except the last to be made, need be made by Southern in an aggregate amount of less than $200,000.

(9) Southern should be required to adjust on a prospective basis the rates herein found to be just and reasonable for the future in Docket No. RP60–15 to reflect United's rates as finally determined in Docket No. RP63–1, to the extent such rates are below the rates originally filed by United in Docket No. RP60–2. In addition, so long as the Docket No. RP60–15 rates, as established or changed pursuant to this order are in effect, Southern should be required to make appropriate reductions in such rates to reflect the effect on the cost of service determined by the Commission in Docket No. RP60–15 of any reduction in rates made by its producer-suppliers. Such reductions by Southern should be made effective on the first day of the month following the month in which the cumulative effect of such producer-supplier rate reductions, excluding those

given effect by Southern in prior rate reductions, results in not less than a 0.1-cent per Mcf decrease on a system-wide basis in Southern's rates.

The Commission orders:

(A) The proposed increased rates filed by Southern in Docket Nos. G–20509 and RP60–15, and contained in the tariff sheets set forth in finding paragraphs (1) and (2), are hereby disallowed.

(B) Within 45 days from the date of issuance of this order, Southern shall file substitute tariff sheets satisfactory to the Commission containing the rates herein found to be just and reasonable in Docket No. RP60–15 as set forth in finding paragraph (4).

(C) Within 45 days from the date of issuance of this order, Southern shall refund to its jurisdictional customers, for the respective periods covered by each docket, the difference between the amounts collected in each docket under the proposed increased rates contained in the tariff sheets disallowed by paragraph (A) and the amounts which would have been collected in those periods under the rates herein found to be just and reasonable as set forth in finding paragraphs (4) and (5) above, together with interest thereon at the rate of 7 percent per annum from the date of payment to Southern to the date of refund.

(D) The rates herein found to be just and reasonable for the future in Docket No. RP60–15 and to be filed by Southern in accordance with paragraph (B) above, are hereby made subject to and shall be adjusted prospectively as may be necessary to reflect any new policies with respect to the treatment of liberalized depreciation and accumulated deferred taxes which may be established by the Commission in *Alabama-Tennessee Natural Gas Company*, Docket No. G–5471, *et al.*

(E) Within 45 days from the receipt thereof, Southern shall refund to its jurisdictional customers the appropriate portion of any refunds which it may receive from United in Docket Nos. RP61–18 and RP63–1, to the extent that such refunds reflect reduced rates in those dockets which are below the rates originally filed by United in Docket No. RP60–2. In addition, Southern shall refund to its jurisdictional customers the proportionate part of any refunds received from its producer-suppliers, attributable to gas purchases during the period the Docket Nos. G–20509 and RP60–15 rates were or are in effect, to the extent that such refunds are based on reductions required or approved by the Commission in rates upon which Southern's purchased gas costs were computed in its cost of service in Docket Nos. G–20509 and RP60–15; provided however, that no such refund, except the last to be made, need be made by Southern in an aggregate amount of less than $200,000.

(F) The rates herein found to be just and reasonable for the future in Docket No. RP60–15, and required to be filed in accordance with paragraph (B) above, are hereby made subject to and shall be adjusted prospectively to reflect the rates for gas purchased from United as finally determined in Docket No. RP63–1, to the extent that such rates are below the rates originally filed by United in Docket No. RP60–2. In addition, so long as the Docket No. RP60–15 rates, as established or changed pursuant to this order are in effect, Southern shall make appropriate reductions in such rates to reflect the effect on the cost of service determined by the Commission in Docket No. RP60–15 of any reduction in rates made by its producer-suppliers. Such reductions by Southern shall be made effective on the first day of the month following the month in which the cumulative effect of such producer-supplier rate reductions, excluding those given

effect by Southern in prior rate reductions, results in not less than a 0.1-cent per Mcf decrease on a system-wide basis in Southern's rates.

(G) Within 15 days after making refunds in accordance with paragraphs (C) or (E), Southern shall report to the Commission in writing and under oath the amount of the refunds made and the relevant calculations with respect thereto, together with releases from each of its jurisdictional customers.

(H) The consolidation of Southern's Zone 3–A into Zone 3 as proposed by Southern is hereby approved without prejudice to any later determination by the Commission with respect thereto.

Commissioner Ross *filed* a supplemental statement.

Commissioner Morgan *concurring* in result, filed a separate statement.

Commissioner O'Connor *concurring*, filed a separate statement.

Commissioner Woodward, *concurring in part* and *dissenting in part*, filed a separate statement.

APPENDIX A

Southern Natural Gas Co. (Docket Nos. G–20509 and RP60–15), cost of service, system gas operations, 12 months ended June 30, 1959, adjusted

Line No.	Particulars	Total	System gas operations			
			Natural gas production, wellmouth	Natural gas production, other	Manufactured gas production	Transmission (including distribution)
	Operating expenses:					
1	Manufactured gas production	$30,171			$30,171	
2	Natural gas production and gathering	1,717,284	$1,262,161	$455,123		
3	Exploration and development	1,583,659	1,583,659			
4	Other gas supply	71,921,036		71,921,036		
5	Storage	117,696				$117,696
6	Transmission	9,828,203				9,828,203
7	Distribution	803,844				803,844
8	Administrative and general	3,589,663	165,311	280,016	10,547	3,133,789
9	Total operating expenses	89,591,556	3,011,131	72,656,175	40,718	13,883,532
10	Depreciation	10,378,546	174,800	166,205	38,005	9,999,536
11	Depletion	378,201	378,201			
12	Amortization	26,174	1,007	409	95	24,663
13	Taxes—other than income	3,720,941	582,713	47,916	6,056	3,084,256
14	Taxes—Federal income	7,485,669		20,954	1,316	7,463,399
15	Taxes—State income	252,107		706	44	251,357
16	Return—at 6.24 percent	14,728,025	662,621	245,312	28,871	13,791,221
17	Revenue credits	(2,558,162)	(596,410)	(1,663,130)	(438)	(298,184)
18	Total cost of service	124,003,057	4,214,063	71,474,547	114,667	48,199,780

Southern Natural Gas Co. (Docket Nos. G–20509 and RP60–15), income tax computation and credit to working capital—by functions 12 months ended June 30, 1959, adjusted

Line No.	Particulars	Total system gas operations	Natural gas production, well mouth	Natural gas production, other	Manufactured gas production	Transmission (including storage and distribution)
1	Net investment in plant	$231,802,480	$9,459,075	$3,415,382	$392,468	$218,535,555
2	Working capital—preliminary	7,075,880	1,159,853	523,892	70,702	5,321,433
3	Rate base—preliminary	238,878,360	10,618,928	3,939,274	463,170	223,856,988
4	Return at 6.24% preliminary	14,906,010	662,621	245,811	28,902	13,968,676
5	Working capital—preliminary	7,075,880	1,159,853	523,892	70,702	5,321,433
6	Less: 48.5% of Federal income tax—current	2,852,317		7,984	501	2,843,832
7	Working capital adjusted	4,223,563	1,159,853	515,908	70,201	2,477,601
8	Rate base adjusted—line 1 plus line 7	236,026,043	10,618,928	3,931,290	462,669	221,013,156
9	Return at 6.24% adjusted	14,728,025	662,621	245,312	28,871	13,791,221
	Federal income tax (per formula)					
10	Return on preliminary rate base (line 4 above)	14,906,010	662,621	245,811	28,902	13,968,676
11	Less: 50.426272% of tax deductions	3,937,082	694,137	113,128	13,908	3,115,909
12	Balance	10,968,928	(31,516)	132,683	14,994	10,852,767
13	Add: Working capital correction for deferred tax	48,561		586	66	47,909
14	Balance	11,017,489	(31,516)	133,269	15,060	10,900,676
15	Less: Surtax exemption	5,333	15	64	7	5,247
16	Balance	11,012,156	(31,531)	133,205	15,053	10,895,429
17	Return and tax—above line divided by .49573728	22,213,694	(63,604)	268,701	30,365	21,978,232
18	Return and tax as above	22,213,694	(63,604)	268,701	30,365	21,978,232
19	Less: Tax deductions	7,807,600	1,376,538	224,344	27,580	6,179,138
20	Taxable income	14,406,094	(1,440,142)	44,357	2,785	15,799,094
21	Distribution of well mouth taxable income deficiency		1,440,142	(4,031)	(253)	(1,435,858)
22	Balance	14,406,094		40,326	2,532	14,363,236
23	Tax at 52%	7,491,169		20,969	1,317	7,468,883
24	Less: Surtax exemption	5,500		15	1	5,484
25	Federal income tax	7,485,669		20,954	1,316	7,463,399
26	Deferred portion of Federal income tax=(52% of excess of liberalized depreciation and accelerated amortization over straight line of $3,085,773)	1,604,602				
27	Current portion of Federal income tax	5,881,067				
28	Federal income tax offset: 48.5% of current portion of Federal income tax	2,852,317				
	State Income Tax					
29	Taxable income—Federal (balance-line 22)	14,406,094		40,326	2,532	14,363,236
30	Tax at 1.75%	252,107		706	44	251,357

Southern Natural Gas Co. (G–20509 and RP60–15), tax formula where a percentage of Federal income tax is credited to working capital

T = Federal income tax
I_t = Taxable income
I_g = Gross income or income before Federal taxes
D = Deductions from return for tax calculation
R = Return
RB = Rate base or plant plus working capital
P = Plant
Wcn = Working capital before offset for Federal income tax
Wct = Working capital after offset for Federal income tax

$$T = .22(I_t - 25{,}000) + .30I_t$$
$$T = .52I_t - 5{,}500$$
$$I_g = R + T$$
$$I_t = I_g - D$$
$$T = .52(I_g - D) - 5{,}500$$
$$R = .0624RB$$
$$I_g = .0624RB + .52(I_g - D) - 5{,}500$$
$$= .0624RB + .52I_g - .52D - 5{,}500$$
$$.48I_g = .0624RB - .52D - 5{,}500$$
$$RB = P + Wct$$
$$Wct = Wcn - .485(T - 1{,}604{,}602)$$
$$.48I_g = .0624[P + Wcn - 0.485(T - 1{,}604{,}602)] - .52D - 5{,}500$$
$$= .0624P + .0624Wcn - .0302640(T - 1{,}604{,}602) - .52D - 5{,}500$$
$$= .0624P + .0624Wcn - .0302640[.52(I_g - D) - 5{,}500 - 1{,}604{,}602] - .52D - 5{,}500$$
$$= .0624P + .0624Wcn - .015737280I_g + .015737280D + 166.452 + 48{,}561.674928 - .52D - 5{,}500$$
$$.48I_g + .015737280I_g = .0624P + .0624Wcn - .504262720D + 43{,}228.126928$$
$$.495737280I_g = .0624P + .0624Wcn - .504262720D + 43{,}228.126928$$
$$I_g = \frac{.0624(P + Wcn) - .504262720D + 43{,}228.126928}{.495737280}$$

Southern Natural Gas Co. (Docket Nos. G–20509 and RP60–15), working capital—system gas operations, 12 months ended June 30, 1959, adjusted

Line No.	Particulars	Adjusted total	Natural gas production, well mouth	Natural gas production, other	Manufactured gas production	Transmission (including storage and distribution)
	Cash requirements					
	Operating expenses:					
	Production:					
1	Manufactured gas production	$30,171			$30,171	
2	Natural gas production and gathering	1,717,284	$1,262,161	$455,123		
3	Exploration and development	1,583,659	1,583,659			
4	Purchased gas	72,269,484		72,269,484		
5	Purchased gas expense	497,797		497,797		
6	Gas used in utility operations—current	(846,245)		(846,245)		
7	Storage	117,696				$117,696
8	Transmission	9,828,203				9,828,203
9	Distribution	803,844				803,844
10	Administrative and general	3,589,663	165,311	280,016	10,547	3,133,789
11	Total operating expenses	89,591,556	3,011,131	72,656,175	40,718	13,883,532
12	Abandoned leases	(329,302)	(329,302)			
13	Purchased gas	(72,269,484)		(72,269,484)		
14	Transmission of gas by others	(547,749)				(547,749)
15	Depreciation—clearing	(305,431)	(14,066)	(23,826)	(897)	(266,642)
16	Transfer gas used in utility operations			689,472	(960)	(688,512)
17	Total cash requirements	16,139,590	2,667,763	1,052,337	38,861	12,380,629
18	45 days cash requirements—12.5% of line 17	2,017,449	333,470	131,542	4,858	1,547,579
19	Materials and supplies	4,728,440	813,726	315,770	65,036	3,533,908
20	Prepayments	329,991	12,657	76,580	808	239,946
21	Subtotal	7,075,880	1,159,853	523,892	70,702	5,321,433
22	Deduct 48.5% of Federal income tax (current) 48.5%×$5,881,067=	2,852,317		7,984	501	2,843,832
23	Working capital	4,223,563	1,159,853	515,908	70,201	2,477,601

APPENDIX B

Southern Natural Gas Company (Docket Nos. G–20509 and RP60–15)

I. Allocation under Mcf-mile method of total transmission system cost between jurisdictional and nonjurisdictional sales

Particulars	Allocation factors				Cost of production				Cost of transmission		Total cost of service
	Adjusted system peak day of winter of 1959–60	Adjusted test year sales	Demand Mcf-miles	Commodity MMcf-miles	Manufactured gas production, demand	Well-mouth, commodity	Other		Demand	Commodity	
							Demand	Commodity			
Jurisdictional transmission system sales:											
Zone 1	77,097	12,730	19,639,542	3,209,165	$6,477	$145,939	$232,810	$2,332,513	$671,752	$461,895	$3,851,386
Zone 2	558,809	93,245	226,140,032	37,640,668	46,943	1,068,975	1,687,437	17,085,249	7,734,911	5,417,620	33,041,135
Zone 3	628,603	165,587	353,103,519	95,148,773	52,805	1,898,315	1,898,193	30,340,448	12,077,581	13,694,758	59,962,100
Total jurisdictional	1,264,509	271,562	598,883,093	135,998,606	106,225	3,113,229	3,818,440	49,758,210	20,484,244	19,574,273	96,854,621
Nonjurisdcitional transmission system sales	100,491	96,024	45,579,378	45,732,395	8,442	1,100,824	303,453	17,594,444	1,559,001	6,582,262	27,148,436
Total transmission system sales	1,365,000	367,586	644,462,471	181,731,001	114,667	4,214,063	4,121,893	67,352,654	22,043,245	26,156,535	124,003,057

II. Derivation of zone revenue levels to be recovered through rates for transmission system jurisdictional sales

	Production cost		Apportionment of 50% of transmission cost on G–13258 revenue pattern		Apportionment of 50% of transmission cost on Mcf-mile basis		Adjusted zone costs utilized as levels to be recovered through rates		Revenue, total	Revenues at G–13258 rates	Revenues at prescribed rates
	Demand	Commodity	Demand	Commodity	Demand [1]	Commodity [1]	Demand	Commodity			
Zone 1	$239,287	$2,478,452	[3] $418,464	[3] $144,084	$335,876	$230,947	$993,627	$2,853,483	$3,847,110	$3,238,396	$3,847,208
Zone 2	1,734,380	18,154,224	[4] 5,133,713	[5] 2,041,648	3,867,456	2,708,810	10,735,549	22,904,682	38,640,231	29,114,483	33,647,570
Zone 3	1,950,998	32,238,763	[6] 7,380,475	[7] 4,910,874	6,038,791	6,847,379	15,370,264	43,997,016	59,367,280	49,995,105	59,374,473
Total	3,924,665	52,871,439	[8] 12,932,652	[9] 7,096,606	10,242,123	9,787,136	27,099,440	69,755,181	96,854,621	82,347,984	96,869,251

[1] Each of the figures in this column represents 50% of the amount allocated pursuant to the Mcf-mile method.

(See schedule 2, sheet 3 of exhibit 52 for derivation of the following percentages.)

[3] $12,932,652 × 3.2357199%.
[5] $7,096,606 × 2.0303170%.
[4] $12,932,652 × 39.6957494%.
[5] $7,096,606 × 28.7693566%.
[6] $12,932,652 × 57.0685307%.
[7] $7,096,606 × 69.2003264%.
[8] $20,029,258 × 64.5688012%.
[9] $20,029,258 × 35.4311988%.

Southern Natural Gas Co. (Docket Nos. G–20509 and RP60–15), classification of overall cost of service natural gas production—Well Mouth, 12 months ended June 30, 1959, adjusted

	Cost of service, amount	Classification			
		Demand		Commodity	
		Percent	Amount	Percent	Amount
Operating expenses:					
Natural gas production and gathering operation:					
Operation:					
Supervision and engineering	$337,857			100.00	$337,857
Other operation expenses	99,761			100.00	99,761
Total operation	437,618				437,618
Maintenance:					
Supervision and engineering	7,343			100.00	7,343
Other maintenance expenses	182,875			100.00	182,875
Total maintenance	190,218				190,218
Miscellaneous:					
Gas well royalties	617,556			100.00	617,556
Other miscellaneous expenses	16,769			100.00	16,769
Total miscellaneous	634,325				634,325
Total natural gas production and gathering	1,262,161				1,262,161
Exploration and development	1,583,659			100.00	1,583,659
Administrative and general	165,311			100.00	165,311
Total operating expenses	3,011,131				3,011,131
Depreciation	174,800			100.00	174,800
Depletion	378,201			100.00	378,201
Amortization	1,007			100.00	1,007
Taxes other than income	582,713			100.00	582,713
Taxes—Federal income					
Taxes—State income					
Return at 6.24%	662,621			100.00	662,621
Revenue credits	(596,410)			100.00	(596,410)
Total	4,214,063				4,214,063

Southern Natural Gas Company (Docket Nos. G–20509 and RP60–15), classification of overall cost of service, natural gas production—Other, 12 months ended June 30, 1959, adjusted

	Cost of service, amount	Classification			
		Demand		Commodity	
		Percent	Amount	Percent	Amount
Operating expenses:					
Natural gas production and gathering operation:					
Operation:					
Supervision and engineering	$27,485			100.00	$27,485
Field compressor station fuel	112,472			100.00	112,472
Field compressor station supplies and expenses	17,596			100.00	17,596
Dehydration plant fuel	44,301			100.00	44,301
Other operation expenses	188,606			100.00	188,606
Total operation	390,460				390,460
Maintenance:					
Supervision and engineering	3,766			100.00	3,766
Field compressor station equipment	28,991			100.00	28,991
Other maintenance expenses	31,906			100.00	31,906
Total maintenance	64,663				64,663
Total natural gas production and gathering	455,123				455,123
Other gas supply:					
Purchased gas	72,269,484	(A)	$4,121,893	(A)	68,147,591
Purchased gas expenses	497,797			100.00	497,797
Gas used in utility operations—Cr	(846,245)			100.00	(846,245)
Administrative and general	280,016			100.00	280,016
Total operating expenses	72,656,175		4,121,893		68,534,282
Depreciation	166,205			100.00	166,205
Amortization	409			100.00	409
Taxes—Other than income	47,916			100.00	47,916
Taxes—Federal income	20,954			100.00	20,954
Taxes—State income	706			100.00	706
Return at 6.24%	245,312			100.00	245,312
Revenue credits	(1,663,130)			100.00	(1,663,130)
Total	71,474,547		4,121,893		67,352,654

(A) Demand charges assigned to demand costs, all other purchased gas expenses assigned to commodity costs.

Southern Natural Gas Company (Docket Nos. G–20509 and RP60–15), classification of overall cost of service, manufactured gas production, 12 months ended June 30, 1959, adjusted

	Cost of service, amount	Classification			
		Demand		Commodity	
		Percent	Amount	Percent	Amount
Operating expenses:					
Manufactured gas production	$30,171	100.00	$30,171		
Administrative and general	10,547	100.00	10,547		
Total operating expenses	40,718		40,718		
Depreciation	38,005	100.00	38,005		
Amortization	95	100.00	95		
Taxes—other than income	6,056	100.00	6,056		
Taxes—Federal income	1,316	100.00	1,316		
Taxes—State income	44	100.00	44		
Return at 6.24%	28,871	100.00	28,871		
Revenue credit	(438)	100.00	(438)		
Total	114,667		114,667		

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Southern Natural Gas Company (Docket Nos. G–20509 and RP60–15), classification of overall cost of service, transmission, 21 months ended June 30, 1959, adjusted

	Cost of service, amount	Classification			
		Demand		Commodity	
		Percent	Amount	Percent	Amount
Operating expenses:					
Transmission:					
Operation:					
Supervision and engineering	$1,368,256	43.87	$600,254	56.13	$768,002
Compressor station fuel	2,214,156			100.00	2,214,156
Compressor station supplies and expenses	423,557			100.00	423,557
Other operation expenses	3,033,949	50.00	1,516,974	50.00	1,516,975
Total operation	7,039,918		2,117,228		4,922,690
Maintenance:					
Supervision and engineering	502,267	31.96	160,525	68.04	341,742
Compressor station equipment	591,354			100.00	591,354
Other maintenance expenses	1,047,404	50.00	523,702	50.00	523,702
Total maintenance	2,141,025		684,227		1,456,798
Miscellaneous:					
Transmission of gas by others	547,749	50.00	273,874	50.00	273,875
Other miscellaneous expenses	99,511	50.00	49,755	50.00	49,756
Total miscellaneous	647,260		323,629		323,631
Total transmission	9,828,203		3,125,084		6,703,119
Distribution	803,844	50.00	401,922	50.00	401,922
Storage	117,696	50.00	58,848	50.00	58,848
Administrative and general	3,133,789	41.46	1,299,269	58.54	1,834,520
Total operating expenses	13,883,532		4,885,123		8,998,409
Depreciation	9,999,536	50.00	4,999,768	50.00	4,999,768
Amortization	24,663	50.00	12,331	50.00	12,332
Taxes—other than income	3,084,256	50.00	1,542,128	50.00	1,542,128
Taxes—Federal income	7,463,399	50.00	3,731,699	50.00	3,731,700
Taxes—State income	251,357	50.00	125,678	50.00	125,679
Return at 6.24%	13,791,221	50.00	6,895,610	50.00	6,895,611
Revenue credits	(298,184)	50.00	(149,092)	50.00	(149,092)
Total	$48,199,780		$22,043,245		$26,156,535

APPENDIX C

Southern Natural Gas Company, rates for jurisdictional sales

Zone	Rate schedule	Monthly demand charge	Monthly commodity charge
Zone 1	CD–1	$1.27	22.80¢ per Mcf for the quantity delivered during the month equal to 10 days' use of the billing demand. 20.24¢ per Mcf for all additional deliveries per month.
	G–1		36.2¢ per Mcf.
Zone 2	CD–2 and P–2*	1.93	24.65¢ per Mcf for the quantity delivered during the month equal to 10 days' use of the billing demand. 22.37¢ per Mcf for all additional deliveries per month.
	G–2		40.4¢ per Mcf.
Zone 3	CD–3	2.42	28.63¢ per Mcf for the quantity delivered during the month equal to 10 days' use of the billing demand. 23.67¢ per Mcf for all additional deliveries per month.
	G–3		46.9¢ per Mcf.
Zones 2 and 3	EX–1		31.36¢.

*Prior to 11–1–61, Southern's Tariff contained a P–2 rate similar to its CD–2 rate. The P–2 rate was canceled effective 11–1–61 by Commission order issued 10–9–61 in these proceedings, without prejudice to the requirements for refunds thereunder upon termination of the proceedings.

Southern Natural Gas Company, comparison of revenues under prescribed rates with adjusted cost of service

	Demand revenue	Commodity revenue	Total revenue
Zone 1:			
CD-1	$987,293	$2,831,468	$3,818,761
G-1	11,334	17,113	28,447
Total	998,627	2,848,581	3,847,208
Cost of service	993,627	2,853,483	3,847,110
Zone 2:			
CD-2 and P-2	9,904,860	21,712,568	31,617,428
G-2	841,334	1,188,808	2,030,142
Total	10,746,194	22,901,376	33,647,570
Cost of service	10,735,549	22,904,682	33,640,231
Zone 3:			
CD-3	14,854,279	43,367,628	58,221,907
G-3	525,101	627,465	1,152,566
Total	15,379,380	43,995,093	59,374,473
Cost of service	15,370,264	43,997,016	59,367,280
Total revenues	27,124,201	69,745,050	96,869,151
Total cost of service	27,099,440	69,755,181	96,854,621

Ross, *Commissioner*, supplemental statement:

In view of the many different interpretations as to the meaning of the *El Paso* decision (Opinion No. 366), issued October 19, 1962, (28 FPC 688), I consider it appropriate to go further than the majority statement and to describe my personal views on the question of pipeline production.

The *El Paso* decision, in my opinion, was not intended to bar the possibility of granting an additional return to a pipeline company to encourage production activities, nor was it intended to advance a general policy discouraging such production. In *El Paso*, we set forth a standard duty of utilities, namely, to operate their properties in a prudent and businesslike manner and to seek to achieve the lowest overall costs for the consumer. This rule applies to the operations which a utility has a duty to perform as part of its public utility function. In this context, it becomes necessary for a utility, in order to receive an additional element of return, to prove that the company is engaged in an activity that it is not required to undertake and one it would not normally pursue, but nevertheless one which results in economic benefits, without undue risk of burdening the public with higher charges or poorer service. To the extent that consumers would provide part of the financial means for engaging in the production business, it is imperative that the results of such contribution be dedicated to the consumer.

Since it is clear this Commission has no authority to order pipelines to engage in the production business, our inquiry extends to a consideration of the nature and extent of the benefits involved and the encouragement required to induce a pipeline to strive to attain the benefits.

Generally speaking, the benefits necessary to justify an additional return are those which permit the more economic supply of gas to a pipeline's customers. Thus, a principal benefit would be established if a pipeline were to show that the impact of its production program actually resulted in a lower city gate gas price to its purchasers. This could be established by a showing that the total unit cost of a pipeline's production was less than the total unit cost of its purchased

gas. In addition, the increased flexibility in meeting system demands and a minimizing of the effects of take-or-pay situations[1] conceivably could be translated into lower overall gas costs. Of course, the extent of the flexibility of the use of gas produced by a pipeline is dependent upon the nature of its agreements with minority interest or royalty owners.

There are other situations, capable of less precise definition, but nevertheless recognizable as beneficial. These would include a company's efforts to assure itself of an independent source of gas at a stable price as an economic brake in the face of steadily rising costs of purchased gas. In addition, it may be desirable to encourage a pipeline to conduct exploratory activities in areas near the company's pipeline, where there is a probability of finding gas in such areas. The extent to which a pipeline's production adheres to conservation practices would also be relevant. For example, the production of gas on a unitized basis should provide benefits which redound to the benefit of the stockholders and customers of a pipeline.

It is quite clear to me, however, that a pipeline advocating an additional element of return on production properties has the burden of making a convincing showing of any advantages it claims. It is not enough to proclaim laudatory statements of intention. Rather, the proof must rest upon the history of the pipeline production operations and by history I mean more than test year data. I mean that data for whatever period necessary to clearly reflect the pattern of a pipeline's system wide production activities. Thus, for example, a pipeline which claims the existence of advantages resulting from the flexibility inherent in its production—as Southern claims here—must show daily deliveries in relation to system demand, together with the alternate methods of meeting such demands.

That there may be benefits is clear. It is also clear that there may be offsetting factors or abuses, and I would expect the Commission's staff and other interested parties to insure that the record is complete with respect to these matters. Evidence of alternative sources of gas at reasonable prices clearly would weigh against the advisability of encouraging a pipeline to undertake its own production. Failure to connect up such sources of gas in order to secure a return on its own wells certainly violates one's sense of conservation and fair play. If a pipeline's production program clearly seems aimed at finding and developing oil properties, then the company's production activities are not such as to warrant an added return paid by pipeline customers. Furthermore, if a company's exploration program is far removed from its pipeline and no prospect of connection in the reasonable future exists, then again the utility of such a program to the principal function of the pipeline is suspect. The actual use of the gas is also pertinent. If a company were to discover large low cost reserves and hold them out, speculating for a higher price on the possibility of the deregulation of the producing industry, or on the possibility of having its gas priced on the basis of area prices or fair field prices rather than on a cost of service basis, its desire to provide economic benefit to the consumer would be subject to question. This would be speculation with the consumer's dollar which I would not encourage. By the same token, substantial off-system sales of gas from a pipeline's own production hardly benefits the consumers who provide the financial means for such exploration and production activities on the basis of receiving benefits therefrom. Another area of possible abuse would be the acquisition of excessive reserves. It is true that present deliverability

[1] In this connection, a pipeline must first demonstrate that gas purchases with take-or-pay provisions oppressive to the company were prudently accepted by the pipeline.

and reserve requirements result in certain holding costs. But this serves as no excuse for exceeding the minimum requirements. Generally speaking, the amount of reserves actually dedicated to the pipeline's customers should be a controlling factor.

Another questionable practice which bears on the return to be allowed for pipeline production is the insertion of take-or-pay clauses in contracts between a pipeline and its production affiliates. This is understandable if the pipeline owns a minor interest in the field or its wholly-owned wells are a small number of a field's total, but where a pipeline affiliate owns and operates substantially all of a certain field, it is inconsistent for the affiliate to charge its parent for gas not taken, particularly when the parent is claiming that its production reduces the take-or-pay problem.

If an added element of return were allowed, I believe we should exercise our obligation to insure that the funds provided by consumers are actually used for their benefit. Accordingly, a Section 5(a) investigation looking toward the lowering of a pipeline's rates would be proper should there be reason to believe that the ratepayers' dollars are not being reasonably and prudently expended to improve the pipeline's jurisdictional service.

With respect to the question of incentive, it is argued that the production business is risky, and risk traditionally commands a higher return to the equity holder. In this connection, I concede that an element of risk may be present in a pipeline's production operations. In analyzing risk, it is necessary to differentiate between the risk to a stockholder in a public utility or similar type of enterprise, and that to a stockholder in an industrial corporation. Generally, a stockholder in an essential and expanding utility operation has reasonable assurance that his company will earn a fair return. Typically, the return may not be as great as that realized in an industrial operation of a more speculative type, but it will usually be more stable through the economic cycle. Assuming therefore, that we are dealing with a public utility, which we are, it would appear that a pipeline stockholder need not and should not expect a rate of return comparable to what can be earned by a non-utility company such as an independent producer. This would seem to be especially true in the case of a pipeline company whose very reason for engaging in production is to serve its jurisdictional customers. The pipeline has a ready market available to it that an independent producer may not have. It can purchase proven reserves rather than having to explore on a wildcat basis. It has substantial resources to self-insure its operations in a way not possible to the independent producer.

I do not say unequivocally that there are no risks to a pipeline company engaged in production of natural gas. As a matter of fact, there can be some risks which go to the final judgment whether to encourage it, discourage it, or adopt a middle course such as the Commission did in *El Paso*, *supra*. For example, while the risk of unsuccessful efforts conducted on a conservative basis have been minimized, a pipeline could experience problems if its exploration and development program were conducted on a large scale in relation to its pipeline operations, and its activities were directed to the wildcatting or other risky exploratory functions, in contrast, for example, to physically less risky developmental efforts conducted on a farm out basis. If a company were to spend large amounts of its retained earnings together with amounts advanced through cost of service and sums borrowed on the general credit of the pipeline and find limited or no volumes, then these expenditures which would be included in the company's cost of service could conceivably increase its overall cost of gas to a point where it might face damaging interfuel competition or competition from other pipelines serving the same area.

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Another associated risk to a pipeline entering into or enlarging its production business which could be a determinant of its success is its ability to attract a competent organization or to retrain its present personnel.

There is also the risk to the consumer, which must be weighed by the regulatory body, that the pipeline might neglect its primary task of providing a pipeline service.

These questions of risk are integrally related with the question of incentive, and the various risks mentioned above are only examples of the risk factors to be weighed in determining whether to encourage production. A further factor related to any consideration of the need for incentive is the element of risk as measured by investor appraisal.[2]

In addition to the above, Southern argues that it needs the incentive of a higher return to assure that there will be adequate supplies of oil and gas. However, there are many able and competent producers, having efficient organizations and adequate capital, with abundant supplies of gas, and there is no expectation that this abundance will not persist for some time. Accordingly, I am not convinced that we should encourage pipelines to attempt to compete with long established organizations specializing in the field solely for this reason.[3]

If an additional return were to be granted to pipeline companies on their production properties to provide encouragement shown to be required to engage in production, it should be for the purpose of achieving proved benefits for the pipeline's jurisdictional customers, and to offset demonstrated risks to the company's stockholders. Because of the possibility of a company incurring unwarranted costs through imprudent or inefficient production operations, or operations not dedicated to the realization of economies in its jurisdictional business, it would be necessary in each case where additional return is claimed for production operations to consider with great care what part of the company's production properties should be included in its jurisdictional rate base; what part of its costs associated with exploration and development, and production and gathering, should be allocated to its jurisdictional cost of service; and what part of such costs should be considered as reflecting reasonable and prudent production operations. The gas consumer should not be required to underwrite unsuccessful production operations from which he derives no direct benefit unless the costs of such operations were prudently incurred on his behalf. If the consumer pays an additional return to the company's stockholders on successful operations and the reasonable cost of the benefits which he receives from the company's production, he should not be asked to insure the stockholders against the loss of their investment in such operations.

This is by no means intended to comprise an all-inclusive listing of the factors relevant to a consideration of this question in the future. To the contrary, this statement is intended simply to describe some of the factors I consider of significance.

In any consideration of these questions, the ultimate long term economic impact of encouraging pipeline production in terms of general public policy must be kept in mind. If, for example, encouragement of pipeline production begins to lead to a monopolization of the gas producing industry in the hands of a few integrated companies, a change in our policy might well be required.

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[2] Here I refer not only to generalized opinions but to the cost of capital as measured in the market place for companies engaged in pipeline production.

[3] As to oil, this Commission has no regulatory authority, and I would not seek to influence the industry with respect to its oil reserves.

It is conceivable that all pipelines might find it necessary to engage in production in order to survive, and that the large producers might at the same time seek to invade the pipeline industry to assure their own survival. The final result could well be the disappearance of the small wildcatter who has contributed his daring and skill to the discovery of many of our large important fields.

It has been urged that this Commission has a moral or ethical obligation to grant an additional element of return in view of the *Panhandle* case[4] and others where it has been said this Commission urged the companies to engage in production and agreed to provide the incentive. First of all, the general attitude of the majority here is not such a sharp departure as some might contend. In *Panhandle*, the Commission sought to encourage pipeline production because of its conviction that benefits would result—benefits, incidentally, of precisely the same nature as described herein. I would encourage pipeline production when convinced that such advantages are present and made available to the consumer giving due consideration to the risks involved and the offsetting factors mentioned above.

Secondly, I question somewhat the role of pipeline production in view of the evidence adduced in this case showing that pipeline production accounted for 40 percent of requirements in 1948 compared to 11 percent (with respect to the 10 largest pipelines) in 1959.

There is, however, a major difference in what I conceive is the attitude of a majority of the present Commission as contrasted with that expressed in *Panhandle* and similar decisions. This difference is one required by law, namely, that we will not take it on faith that pipeline production effectuates advantages, but rather require a factual demonstration of advantages which are alleged.[5] It is an established legal principle that a regulatory agency must make its findings on the basis of a record and the majority has demonstrated its intention to adhere to this requirement. Also it is clear a regulatory agency cannot bind itself to act in the future.

In conclusion, as to the fundamental principle whether a pipeline should receive an additional rate of return on its production properties, it is my conviction that before such additional compensation is allowed, there must be a record showing that the pipeline company's production operations are in practical effect a benefit to consumers, and that a special incentive is required to produce these benefits. To do otherwise would be to abdicate our responsibilities under the Natural Gas Act.

MORGAN, *Commissioner*, concurring in result:

Here, as in *El Paso*, 28 FPC 688, we find ourselves divided and perhaps confused by the question whether we are justified in granting a premium or "incentive" rate of return for the well-mouth properties and production activities of pipelines.

Of the various separate statements on this subject filed in connection with the opinion here issued, I find myself most nearly in agreement with that contained in the majority opinion itself. With the dissenting opinion I find myself in nearly total disagreement, and while there is much in Commissioner Ross's statement which a thoughtful person may well ponder, it raises many unanswered questions and fails to outline any clear avenue of policy as a guide, either for industry or for this Commission.

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[4] *Panhandle Eastern Pipe Line Co., et al.*, 13 FPC 53.
[5] *City of Detroit* v. *F.P.C.*, 230 F. 2d 810 (C.A.D.C., 1955).

With respect to the discussion contained in the majority opinion, I must point out a similar failure to articulate a sufficient and supportable public policy on this important question.

Let us consider the following two paragraphs from the majority opinion:

> In general it would warrant allowance of an additional return on production property if a pipeline made two showings. First it must demonstrate that the production activity is being carried on for the sole purpose of supplying gas to its pipeline customers. This requirement cannot be fulfilled by mere statements of intention, but must rest upon the history of the pipeline production operations and the commitments the pipeline has made by practical dedication of its production properties to pipeline service. It should not need argument to support the conclusion that *if a pipeline is engaging in production operations for the benefit of groups other than its customers, the customers should not be paying a premium return on the production property.*
>
> A second essential showing is that the production operation has been so conducted that it is or will be of practical economic advantage to the pipeline's customers. *A pipeline whose production properties make no demonstrable contribution to reduction of costs or improvement of service is likewise in no position to demand a premium return on its production investment.* [Emphasis supplied.]

It is easy to agree with these statements as far as they go, but as I shall demonstrate, they do not go far enough. It is not enough to say that utilities which fail or are unable to make the showings specified above are in no position to demand *premium* rates of return. The plain fact is that utilities which cannot make the required showings stand in no position to demand *any* rate of return—at least on those properties for which they have failed, when challenged, to make such a showing. Indeed they stand in some danger of disallowance (for rate-making purposes) of cost-of-service items in connection with the operation of such properties.

There is nothing new or startling about this position. For decades it has been standard practice of regulatory agencies to insist that utility undertakings must meet and pass a standard test: that their properties are "used and useful," as well as appropriate by standards of prudent management, for the service of consumers who are required to pay for them through rates having the force of public law. This concept is so old and so well-established in law, including judical decisions too numerous to list here, that perhaps the strangest aspect of the matter is the need to mention the existence of such a concept in this concurring statement at all.

Clearly, the Commission in past years has allowed this concept to fall into disuse. The list of cases presented by Commissioners O'Connor and Woodward, wherein the Commission allowed premium rates of return on well-mouth properties without rigorously subjecting those properties to the "used and useful" test is in itself enough to demonstrate that fact. It is altogether possible that the present Commissioners, including myself, were remiss in our application of that test in *El Paso*, but at least we did not compound any error we may have committed by allowing a *premium* rate of return on well-mouth properties, some of which might possibly have failed to meet the test.

In any event, the criteria set forth in the two paragraphs I have quoted from the majority opinion are *not* tests of the propriety of an extra rate of return. On the contrary they are tests of the propriety of including certain property in the rate base, or of excluding it therefrom. Hence they constitute the mini-

mum test necessary before even a minimum rate of return on such property may be allowed.

Immediately following the two paragraphs I have already quoted and discussed, the majority opinion sets forth this comment:

> In *El Paso* we discussed the question whether production operations of a large pipeline system involve additional risk for which it should be compensated. This is indeed a factor, but we emphasize that there can be no reward supplied by a pipeline's customers for risk which is not incurred in a successful effort to improve the economics of pipeline gas supply. *The risk factor, we conclude, is not determinative, but rather the key question is whether the consumers can equitably be asked to provide an additional element of return on account of production investment. Before this Commission could recognize an equitable obligation to allow such additional compensation, we would require a record showing that the production operations were, in practical effect, a benefit to consumers.* [Emphasis supplied.]

As can be seen, that paragraph is circular in its reasoning. It disposes of the risk factor by adverting again to the "used and useful" test, which I have already shown is not determinative of a *premium* rate of return.

I believe that, after the "used and useful" test has been successfully negotiated, the presence or absence of a pronounced risk factor may well be determinative of this question, if risk is found to be the crucial factor determining shortage or adequacy of capital supply.

In dealing with the question of a proper rate of return we must determine the lowest rate of earning on securities necessary to attract the needed capital of investors to carry on a given enterprise. Orthodox financial theory holds that there is a direct and sensitive relationship between, (a) the respective rates of earning regarded by investors as satisfactory and (b) the respective degrees of risk to which their investments may be subjected. Classic market theory maintains that all informed investors consider this relationship to be the pivotal point in the making of any investment. It is not uncommon to find the same investor, on the same day, purchasing two issues of securities, one of which indicates very low prospective earnings from an extremely safe enterprise, and the other indicating prospective earnings two or three times as high from a comparatively risky enterprise. Such an investor obviously considers the disparity in opportunity for earnings to be balanced by the disparity in risk to his money. Or to put it more simply, if possible, he tends to associate the factor of added risk directly with the factor of premium return. *He is only willing to incur the one if he has an opportunity for the other.*

From the foregoing I am convinced that the burden of proof which must be shouldered by a pipeline company which applies for premium rates of return on well-mouth properties is twofold: First, to justify a normal rate of return, it must show that all property and expenses involved are used and useful in the service of its customers; and second, to justify a premium rate of return, it must show that its production activities are accompanied by such an unusual degree of risk to the pipeline company that they cannot be financed except by the allowance of a premium rate of return. It goes without saying that this second step must include a solid demonstration of that specific rate of return required by real—not theoretical—conditions in the money market and in the producing industry generally.

For it should be pointed out that under real conditions of the market place the collective judgments of investors sometimes result in departures from classic

market theory, in that high-risk industries sometimes yield low earnings and vice versa. For example, some industries ordinarily thought of as risky may have such sweeping tax advantages that they can generate most of the needed capital themselves while enjoying an oversupply of outside capital, with the result that there is substantial over-investment despite a surprisingly low rate of return. The oil industry in Texas, now operating only eight days a month, appears to be such an example.

Our statutory responsibility in this matter is plain.

When we set a rate of return for an enterprise within our jurisdiction under the Natural Gas Act, we are obliged to set that rate of return at a level which will produce "just and reasonable rates." And the Supreme Court has more than once reminded us that in each instance this means "the lowest possible reasonable rate." It is difficult to see how we can carry out that responsibility if we allow premium rates of return to be established for any other reason than *proof* of that which is presumed to be the operative causal factor in the money market: namely, an added degree of risk plainly requiring such a premium in order to attract capital. For if that factor is missing (or is exaggerated) we shall have allowed the establishment of a higher level of prospective earnings than is demanded by the prospective investor based on the risk to his money. And this will inevitably confront the consumer with rate levels higher, by definition, than necessary; and therefore, also by definition, higher than "just and reasonable."

It is possible to say a great deal at this point concerning the degree of risk actually attendant upon production activities by pipelines, as well as the rate of return actually earned by the producing industry generally, but that is not necessary here. We may properly wait upon an applicant, unlike Southern Natural, which has attempted to shoulder the necessary burden of proof.

O'CONNOR, *Commissioner*, concurring:

While most of this opinion relates solely to the operation of Southern Natural's system, one aspect will have a direct and important impact on the plans of many pipeline companies. I refer to the discussion of rate of return on investment in production properties. The Commission here refuses to allow additional return on Southern's production investment, citing in support of its decision certain deficiencies in Southern's proof. Although I agree that the record does not justify granting additional return in this case, I believe further Commission guidance is compelled by the history and nature of this problem. For here, as in the *El Paso* opinion, the Commission fails to describe in adequate detail the circumstances in which additional return will be granted on investments in production property.

In dealing with this matter the Commission does not write on a clean slate. Its actions take place in the context of regulatory policies, judicial decisions and industry development of the past decade. It is only from this vantage point that the impact of today's decision can be appreciated.

COMMISSION POLICY. Prior to 1954 the Commission had been divided on the question of the appropriate treatment of pipeline-produced gas. See Natural Gas Investigation of 1948, Smith-Wimberly Report, 234–35, Olds-Draper Report, 117–158; *Northern Natural Gas Co.*, 11 FPC 123 (1952); *Northern Natural Gas Co.*, 12 FPC 66, 77–82 (1953) (dissenting opinion of Commissioner Buchanan). However, from January 1954 until the recent *El Paso* decision, the Commission consistently granted extra compensation for pipeline production.

The initial definitive decision in this area came in January 1954 in *Panhandle Eastern Pipe Line Co.*, 13 FPC 53. The Commission there held that gas produced by Panhandle should go into its cost of service at a fair field price rather

than on a cost basis. Its reasoning was founded on three governing factors: (1) the numerous advantages of pipeline production to consumers; (2) the inability of the Commission to compel pipelines to engage in exploration and development activities; (3) the actual drop in pipeline production when regulated on a strict cost-of-service basis. The Commission concluded: "If there is to be natural-gas exploration, development, and production by pipeline systems themselves therefore—with resultant benefits to the public interest—it follows that this must result from regulatory policies designed to encourage, rather than to penalize, such activities." 13 FPC at 74–75.

In November 1954 the Commission again directed itself to this question in *El Paso Natural Gas Co.*, 13 FPC 421. It acknowledged that the intervening *Phillips* decision by the Supreme Court [1] required a re-examination of all aspects of producer regulation. However, it noted that production by pipelines would be treated on a par with production by independent producers, and it granted El Paso a fair field price for the gas it produced.

The question of compensation of pipeline production activities was not again raised until May 1957 in *Olin Gas Transmission Corp.*, 17 FPC 695, when the Commission allocated a price for Olin's gas in excess of cost. It concluded: "On consideration of all the factors, on the basis of the record in this case, we conclude that the increased rates proposed by Olin will, while remaining within the bounds of reasonableness, serve the desirable and proper purpose of affording Olin the incentive and, at least to a degree, the means for undertaking the exploration and development which are required in the interest of Olin's customers, to meet their need for continued supplies of natural gas at reasonable rates." [17 FPC at 701]

The question was next before the Commission in June 1958 in *Colorado Interstate Gas Co.*, 19 FPC 1012. There the Commission agreed with the presiding examiner that Colorado Interstate had not introduced sufficient evidence to justify a fair field price for the gas it produced. However, it established a rate of return of 6 percent which equalled 12.85 percent on the Company's common equity. In so doing, the Commission recognized that this was a generous margin over the "bare bones" cost of money and that it was comparable to the rates of return granted independent producers.

In August 1959 the matter was again raised in *El Paso Natural Gas Co.*, 22 FPC 260, where the Commission again granted an additional incentive to engage in gas production activities. The formula adopted by the Commission was to allow the company to retain the statutory tax incentives granted gas producers. The effect, as the Commission noted, was to allow a rate of return of 8.61 percent on production properties, as compared to the over-all rate of return of 6.35 percent.[2]

In the July 1960 interim order of the instant case the Commission reserved for future determination the question of compensating Southern's production activities but expressly reaffirmed its policy: "The Commission has heretofore expressed its opinion as to the desirability of encouraging pipeline companies in the development of their own natural gas production, and perhaps Southern in this proceeding is entitled to a greater return on its production properties than on its pipeline properties." *Southern Natural Gas Co.*, 24 FPC 26, 31 (1960).

The final opinion in this series came in April 1961 in *Panhandle Eastern Pipeline Co.*, 25 FPC 787. In this case the Commission agreed with the presiding examiner that Panhandle had not shown that it should be allowed the commodity price or fair field price over and above its cost of service for the gas

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[1] 347 U.S. 672.

[2] *Accord, United Fuel Gas Co.*, 23 FPC 127 (1960); (restating the *El Paso* approach).

it produced. However, in light of the evidence of Panhandle's financial needs for exploration and development and as an incentive to engage in such activities, the Commission granted a rate of return of 6 percent on well-mouth properties, as compared to 5.75 percent on its other investments.

Thus, from January 1954 until the recent *El Paso* opinion and this opinion, the Commission has consistently granted an incentive or additional compensation for pipeline production. The variances in the above cited cases came in the approach to the issue, in formulating a theory for measuring the incentive. In every instance some additional return was granted.

JUDICIAL REVIEW. Three of the above cases were reviewed by the courts. The Panhandle decision granting a fair field price for gas produced by Panhandle was remanded to the Commission on appeal in *City of Detroit, Michigan*, v. *F.P.C.*, 230 F. 2d 810 (D.C. Cir. 1955), on the grounds that the record as presented did not support the fair field price and that a cost-of-service price should at least have been used as a comparison. However, the Court expressly noted that the Commission could consider the need for encouraging exploration and development of gas resources by a pipeline company in fixing its rates.

The decision granting El Paso additional compensation on its production activities by means of allowing it to retain the statutory tax incentives resulting therefrom was also appealed. There the Court of Appeals for the Fifth Circuit held that the Commission had adopted an improper formula in determining the compensation for El Paso's production. However, it stated: "El Paso contends, the Commission recognizes, and the State of California and other intervenors do not dispute, that in the ordinary circumstances the producer is entitled to a rate that permits him to recover his costs and a reasonable return on his investment, which return must include an increment of incentive for exploration and development and compensation for the wasting asset. Here, however, the parties differ widely on what, on the record before us, El Paso is entitled to as representing this increment." The Court concluded: "It is the duty of the Commission to fix a rate that represents the cost of service and a reasonable return on the investment, including compensation for consumption of the gas and an increment for incentive, instead of merely *treating* the tax savings as the amount necessary to provide for return and incentive." *El Paso Natural Gas Co.* v. *F.P.C.*, 281 F. 2d 567, 570, 573 (5th Cir., 1960).[3]

The Commission's decision in *Panhandle Eastern* to grant an extra rate of return for production activities also was subjected to review in *Panhadle Eastern Pipe Line Co.* v. *F.P.C.*, 305 F. 2d 763 (D.C. Cir., 1962). The court affirmed the Commission, holding that it was not error for the Commission to grant Panhandle additional return on its production properties and to refuse to allow a field price.

It appears, therefore, that in two instances on review the Courts have disagreed with the Commission's formula for determining the proper additional compensation for pipeline production. However, in *every instance* the Courts have not disputed but have expressly affirmed the Commission's power to grant such additional compensation.

INDUSTRY DEVELOPMENT. During this period several large pipeline companies substantially expanded their exploration and development activities.[4] The re-

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[3] *Accord, City of Lexington* v. *F. P. C.*, 295 F. 2d 109 (4th Cir. 1961) (*United Fuel Gas Co.* case).

[4] The following figures, taken from the annual reports to the Commission, represent amounts of exploration and development expenditures which were charged off each year as expenses. While they do not include the amounts (often greater) of exploration and development expenditures which were capitalized, these figures do accurately reflect the companies' exploration and development activities. The figures have been rounded off to the nearest $100,000.

ported expenditures of Southern Natural Gas Co. from 1951 through 1954 never exceeded $400,000. Thereafter its reports show expenditures of $1,500,000 (1955), $2,400,000 (1956), $2,000,000 (1957), $3,400,000 (1958), $2,300,000 (1959), $2,900,000 (1960) and $1,100,000 (1961). Tennessee Gas Transmission Company has a similar history. Prior to 1955 its only exploration and development activities were conducted through a partially-owned subsidiary, Tennessee Production Company which did not engage in substantial exploration efforts.[5] However, it reported expenditures of its own thereafter of $1,300,000 (1955), $2,700,000 (1956), $3,800,000 (1957), $3,200,000 (1958), $4,600,000 (1959), $7,200,000 (1960) and $1,000,000 (1961). Prior to 1954 El Paso Natural Gas Company did not report expenditures over $2,000,000. Thereafter, however, its expenditures were $3,200,000 (1954), $4,900,000 (1955), $6,600,000 (1956), $8,000,000 (1957), $6,800,000 (1958), $7,400,000 (1959), $11,400,000 (1960) and $7,500,000 (1961). From 1951 through 1954 Panhandle Eastern Pipe Line Co. reported expenditures less than $800,000 annually. Thereafter it spent $1,000,000 (1955), $1,000,000 (1956), $1,200,000 (1957), $2,300,000 (1958), $1,800,000 (1959), $1,400,000 (1960) and $1,300,000 (1961).

It cannot be said, of course, that these increases were due solely to the Commission policy which was begun in 1954 and maintained consistently until October 1962. However, there can be little doubt that this policy was a critical factor in the decisions of these companies to substantially expand exploration and development activities.

Viewing in proper context the question of compensating pipeline production, it is seen that from January 1954 until October 1962 the Commission followed a consistent policy of granting additional compensation on these investments, that the courts consistently affirmed the Commission's power to do so, and that at least four large pipeline companies substantially increased their exploration and development in reliance thereon. This, of course, does not in itself prove that Southern Natural should be granted additional return for its production activities, where there has been insufficient record proof that their consumers benefited thereby. What it does prove in unmistakable terms is that in response to an encouraging regulatory policy, pipelines have engaged in large scale exploration and development activities—activities which generally benefit the consumer, which affect thousands of workers, and which involve the expenditure of tens of millions of dollars annually.

It is clear that whatever action the Commission takes will directly affect the decisions of pipeline companies as to further exploration and development. A withdrawal from these activities by the pipelines would substantially reduce the future gas supply of millions of consumers, would displace thousands of workers, and would remove from the economy the tens of millions of dollars now spent annually. I maintain that this matter so critical to the planning of the affected companies and ultimately to the economy of the Nation cannot remain a matter of speculation and gradual evolution through a series of litigated cases, which may or may not produce records conducive to an ultimate complete determination of the question and which may in itself cause a withdrawal. In two of such cases—the *El Paso* opinion and this opinion—the Commission has denied the requested additional return for alleged lack of supporting evidence but has failed to adequately describe the circumstances in which additional return will be granted, thereby casting an ominous shadow on the whole question.

In view of these considerations, I feel that three observations are in order. First, I will make clear my own position on the threshold issue. It is my firm conviction that it can be clearly advantageous to consumers for their pipeline

[5] See 1954 Moody's Industrial Manual 877–78.

supplier to have an independent source of gas in the form of its own production. It is equally clear to me that pipelines have no duty under the Natural Gas Act to conduct exploration and development programs to acquire their own production. Therefore, I believe we should adhere to the policy of granting additional return on pipeline production properties in appropriate cases to encourage the type of exploration and development which confers practical economic benefits upon consumers. Second, I think it important to point out that the majority of the Commission agrees and has positively expressed that additional return will be granted on pipeline production investment in appropriate cases. [Opinion and Order, p. 338; Concurring Statement of Commissioner Ross, pp. 365, 369; Dissenting Statement of Commissioner Woodward, p. 376.] Third, I believe that a more definitive and complete resolution of this problem cannot await a case-by-case determination which may ultimately develop sound policy only at the cost of presently damaging the economy. Rather, it must be resolved immediately on a general basis. I therefore recommend that we initiate a rulemaking proceeding which, after consideration of industry-wide evidence, will explicitly determine the circumstances under which additional return will be granted on production investment.

Because of the above-stated views, I cannot join in the portion of the opinion dealing with the production issue although I concur in the result thereof. Apart from this matter, however, I am in agreement with the opinion and order.

WOODWARD, *Commissioner*, concurring in part and dissenting in part:

The majority Opinion and Order in this case again invokes the formula first adopted in the recent *El Paso* case[1] by declaring, "The criteria applied by us in the *El Paso* case in rejecting the company's proposal for such an additional allowance for incentive govern the disposition of this issue here; and the findings there made with respect to El Paso may be made on the present record with respect to Southern" (P. 337). The majority has incorrectly disposed of the issue of rate of return on production investment to which Southern Natural Gas Company is legally entitled.

The statements and conclusions expressed in my dissenting opinion in the *El Paso* case are equally applicable in the instant proceeding and bear repeating here; such judgment on the part of the majority is erroneous and must again be labeled unsound.

Significantly, although the majority adopt their findings with respect to rate of return on well-mouth properties as expressed in the *El Paso* case, they again fail to consider the concise mandate of the Fifth Circuit Court of Appeals in remanding that case to the Commission:[2] "Upon such remand, the Commission will receive such evidence as may be necessary to enable it to fix a just and reasonable rate to permit a fair return on the well-mouth investment and provide the incentive necessary to attract capital to the exploration and development activities of the Company." This directive compels the conclusion that a separate rate of return must be allowed. In this record, as in the *El Paso* record, there is more than ample evidence to justify such a finding.

Prior to the recent *El Paso* decision, the Commission consistently granted extra compensation for pipeline production. In *Panhandle Eastern Pipeline Company*, 13 FPC 53, the Commission allowed gas produced by Panhandle to be included in its cost of service at a fair field price in lieu of a cost

[1] Commission Opinion No. 366, issued October 19, 1962, 28 FPC 688.
[2] *El Paso Natural Gas Company* v. *F.P.C.*, 281 F. 2d 567 (CA 5).

basis. There the Commission declared, "It is an established fact that this Commission cannot compel natural gas companies subject to its jurisdiction to engage in exploration, drilling and related developmental activities or to acquire and attach gas reserves discovered by others. . . . If there is to be natural gas exploration, development and production by pipeline systems themselves, therefore—with resultant benefits to the public interest—it follows that this must result from regulatory policies designed to encourage, rather than penalize, such activities." 13 FPC 75.

In *Olin Gas Transmission Corporation*, 17 FPC 701, the Commission granted Olin an added incentive stating, *inter alia*, "There was evidence of increased operational flexibility to the company resulting from ownership of its own production as contrasted with purchasing its gas from others, which would redound to the benefit of the consumer."

Further, in *United Gas Pipeline Company* v. *Memphis L., G. and W. Div*, 358 U.S. 103, the Supreme Court emphasized the fact that the Natural Gas Act requires protection for the gas companies as well as the consumers, saying: "It seems plain that Congress, in so drafting the statute, was not only expressing its conviction that the public interest requires the protection of consumers from excessive prices for natural gas, but was also manifesting its concern for the legitimate interest of natural gas companies in whose financial stability the gas consuming public has a vital stake."

As a result of uniform Commission policy which granted additional compensation for pipeline production operations, major pipeline companies greatly expanded their exploration and development activities with resultant benefits to the gas consuming public. Recorded statistical studies vividly reflect this fact. The creation of this vigorous economic stimulus, through useful regulation, infused new life into the natural gas industry and the national economy. Now the Commission has abandoned this policy based on years of reliable precedent by promulgating doctrine which is fundamentally inconsistent with the character of, and the conditions prevailing in, the gas producing industry.

The majority has given narrow consideration to the long-run economic significance of the course which this Commission had previously elected to follow.

Continued abundant gas production is an essential ingredient of a strong economy and the precedent which has been affirmed in this case will bear heavily on the future course of industry growth.

In the instant proceeding, the Commission endeavors to set forth certain "general" conditions or guidelines which must be met by a pipeline company to warrant allowance of an additional return on production property:

(1) Practical dedication of production properties to pipeline service.

(2) The conducting of production operations so that they are or will be of practical economic advantage to the pipeline's customers (P. 337).

Let us consider what weight the Commission attributes to its conditions or guidelines when the granting of additional return is the fact in issue. When El Paso sought to make a formal dedication of its reserves to pipeline service if the Commission would grant an adequate incentive,[3] its forthright offer was summarily rejected because the Commission did not think such dedication would satisfy its "objections".[4] The guidelines or conditions which appear in the majority opinion are vague and indefinite—in effect, they are not guidelines at

[3] Petition of El Paso Gas Co., Docket No. G–4769, *et al.* for rehearing, filed November 9, 1962, p. 9.

[4] Order denying rehearing, Docket No. G–4769, *et al.* issued December 7, 1962, p. 954, 28 FPC 952.

all. We are still at a loss to determine what standards, if any, must be followed to afford an appropriate basis for allowing higher return on production properties before any company in like circumstances can successfully assert such a contention.

As the Fifth Circuit decision, *supra*, explicitly declares, "It has also been recognized not only by Congress but by the courts as well that there is a public interest in the creation of an incentive to cause additional exploration and development in the oil and natural gas industries." Clearly, there is a vital need for the inclusion of an adequate incentive quotient in determining the rate of return on production investment. While our policies must protect the indispensable rights of all consumers, they must, at the same time, assure a healthy industry to serve them. Consumer interests, like those of the gas producing industry, are one and the same when viewed as part of the national interest.

The function of this Commission is to regulate in such a way as to encourage, rather than discourage enterprise while at the same time rendering benefits to the consumer of today and those of the future. It is wholly desirable that regulated companies move forward with investment and imagination in order to insure development consistent with the public interest. Sound stimulation of enterprise is essential; retardation through faulty regulation is precarious.

Exclusive of the matter of the proper rate of return on production properties, I concur with the majority in the foregoing opinion.

[LETTER REJECTING APPLICATION FOR CERTIFICATE]

Pan American Petroleum Corporation
Docket No. CI63–867

FEBRUARY 19, 1963.*

Pan American Petroleum Corporation,
P.O. Box 40, Casper, Wyo.

(Attention: Mr. Harold H. Young, Jr.)

GENTLEMEN: This is with reference to your letter of January 14, 1963, submitting an application for certificate of public convenience and necessity, assigned Docket No. CI63–867, for proposed sales of gas to Colorado Interstate Gas Company from the Beaver Creek Field (Phosphoria Formation), Fremont County, Wyoming.

The sales are proposed to be made pursuant to a contract dated October 4, 1962, attached as an exhibit to your certificate application. The contract incorporates pricing provisions other than those permitted by Section 154.93 of the Commission's Regulations. Therefore, in accordance with Sections 154.93 and 154.100 of the Regulations, your certificate application and exhibits thereto are hereby rejected. All available copies are returned herewith.

This rejection is without prejudice to the resubmittal of an original and seven copies of your application and exhibits thereto which do not contain the unacceptable pricing provisions.

Very truly yours,

J. H. GUTRIDE,
Secretary.

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*Rehearing denied by order issued March 7, 1963, 29 FPC 431. Set aside, 317 F. 2d (CA10–1963); reversed *sub nom F.P.C.* v. *Texaco, Inc.*, 377 U.S. 33 (1964).

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

THE WASHINGTON WATER POWER COMPANY, PROJECT NO. 2075

ORDER APPROVING REVISED PROJECT EXHIBIT AND ADJUSTING ANNUAL CHARGES

(Issued February 19, 1963)

Application was filed December 4, 1962 by The Washington Water Power Company, licensee for major Project No. 2075, now under construction on Clark Fork in Sanders County, Montana, and affecting lands of the United States within the Kaniksu and Lolo National Forests and other lands of the United States.

The application seeks Commission approval to exclude from the projects Lots 5 and 8 (embracing 74.93 acres of lands of the United States) in Section 29, T. 26 N., R. 32 W., M.P.M. The lots, which are shown as presently within the project on Exhibit K, Sheet 1A (FPC No. 2075–90), now part of the license, were used by the licensee for gravel source during construction of the project and are not now necessary for project operation. The licensee has authorized Commission staff to revise the Exhibit K sheet so as to eliminate the lots therefrom, and the revision was made on December 4, 1962.

The exclusion of the lots from the project will result in a decrease of $149.86 in the annual land charges now fixed in the license.

By letter dated February 13, 1958, the Forest Service concurred in the elimination of the lots from the project.

The Commission finds:

(1) Exhibit K, Sheet 1A (FPC No. 2075–90), revised by Commission staff on December 4, 1962, conforms to the Commission's rules and regulations and should be approved as part of the license for the project.

(2) The decreased annual charges for recompensing the United States for the use, occupancy and enjoyment of its lands by the project is reasonable as hereinafter fixed and specified.

The Commission orders:

(A) The revised Exhibit K sheet described in finding (1) above is hereby approved as part of the license for the project.

(B) Subparagraph (ii) of Article 36 of the license for Project No. 2075 is hereby revised, effective as of December 4, 1962, by substituting the figure ($2,714.86) for the figure ($2,864.72) appearing therein.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

COLUMBIA GULF TRANSMISSION COMPANY, DOCKET NO. CP63-139

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 20, 1963)

On November 21, 1962, Columbia Gulf Transmission Company (Applicant) filed in Docket No. CP63-139 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1963 and the operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased by United Fuel Gas Company (United Fuel) from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in connecting to its pipeline system new supplies of natural gas which will be purchased by United Fuel in various producing areas generally co-extensive with Applicant's system.

The total cost of the proposed facilities will not exceed a maximum of $500,000, and no single project will exceed a cost of $125,000. The proposed facilities will be financed from funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on February 14, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Columbia Gulf Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 5, 1958, in Docket No. G-15524 (20 FPC 681).

(2) The facilities hereinbefore described as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities to take natural gas purchased from producers thereof as proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applican't compliance with all applicable Commission Regulations under the Natural Gas Act

and particularly the general terms and conditions set forth in paragraphs (a) and (e) of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization hereinafter granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization hereinafter granted, (d) location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $500,000, with no single project to exceed a cost of $125,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Columbia Gulf Transmission Company to construct during the calendar year 1963 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to United Fuel Gas Company.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $500,000, with no single project to exceed a cost of $125,000.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

REVISION OF ANNUAL REPORT FORM PRESCRIBED FOR ALL LICENSEES OF PRIVATELY OWNED MAJOR PROJECTS (UTILITY AND INDUSTRIAL) SUBJECT TO THE FEDERAL POWER ACT, F.P.C. FORM NO. 9, DOCKET NO. R-212

ORDER NO. 252-A

ORDER REVISING SCHEDULE PAGES OF ANNUAL REPORT FORM, F.P.C. FORM NO. 9, FOR LICENSEES OF PRIVATELY OWNED MAJOR PROJECTS (UTILITY AND INDUSTRIAL)

(Issued February 20, 1963)*

On August 7, 1962, the Commission by Order No. 252 (28 FPC 298) (27 F.R. 8030-8031, August 11, 1962) prescribed a new Annual Report Form, FPC Form No. 9, for Licensees of privately-owned projects under Commission license (major). Subsequent to the issuance of Order No. 252 examination of the Schedule Pages of the Report Form promulgated therein revealed the need for certain minor corrections. Additionally, several printing errors appear in copies of the Report Form as distributed to Licensees following the issuance of Order No. 252. The necessary corrections are as set forth hereinafter.

The Commission does not contemplate the redistribution of corrected copies of FPC Form No. 9 to those Licensees who now have copies of the Report Form for use in reporting 1962 data since all of the corrections here proposed are minor in nature and susceptible to correction through typed or handscript changes on the Report Forms heretofore distributed. Licensees who have received the uncorrected forms are requested to make such corrections. Licensees who have not received copies of FPC Form No. 9 for use in reporting 1962 data will be furnished corrected copies.

The Commission finds:

(1) It is necessary and appropriate for the purposes of the Federal Power Act that the Schedule Pages of FPC Form No. 9 as set forth in Appendix A to Order No. 252 be corrected to read as set forth hereinafter.

(2) Good cause exists for adoption and promulgation of the matters referred to above effective as of the issuance date of this order.

(3) The corrections herein adopted and approved are for purposes of clarification and editorial revision. Notice and opportunity for comment thereon pursuant to section 4(a) of the Administrative Procedure Act prior to the adoption and promulgation thereof is unnecessary.

The Commission, acting pursuant to the Federal Power Act, as amended, particularly sections 3(13), 4 (a), (b), (c), 301(a), 302, 304, 309, and 311 thereof (16 U.S.C. 796(13), 797 (a), (b), (c), 825(a), 825a, 825c, 825h, and 825j), *orders:*

(A) The following corrections to the Schedule Pages of FPC Form No. 9 prescribed for Licensees of privately-owned major projects (utility and industrial) subject to the provisions of the Federal Power Act as set forth in Appendix A to Order No. 252 are hereby adopted and promulgated:

Page 1—column (a), item 4(e), change "Licensee's copy of licensee for project:" to "Licensee's copy of license for project:"; after item 4(f), add item "5. State or States in which project is located."

Page 11—column (c), eliminate the dollar sign and the cents sign.

*Published in the Federal Register on March 2, 1963 (28 F.R. 2029).

Page 17—eliminate second sentence of the requirements for verification.

(B) This order shall be effective upon the date of issuance thereof.

(C) The Secretary of the Commission shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

APPALACHIAN POWER COMPANY, DOCKET NO. E-6900

ORDER MODIFYING OPINION AND ORDER AND DENYING APPLICATION FOR REHEARING AND REQUEST FOR STAY

(Issued February 21, 1963)

On January 23, 1963 Appalachian Power Company (Appalachian) filed an application for rehearing and an application for a stay of our Opinion and Order No. 375 issued December 31, 1962, 28 FPC 1199. In its application for stay, Appalachian requests a stay of our order pending disposition of Appalachian's application for rehearing, or a petition for judicial review Appalachian says it will file in the event rehearing is denied.

Among other things, our Order of December 31, 1962 found (1) that Appalachian practiced deferred tax accounting but did not observe accounting and reporting requirements of this Commission as described by the Accounts prescribed by Commission Order No. 204, issued May 29, 1958, 19 FPC 837; (2) that Order No. 204 made the use of the Accounts it prescribed mandatory for all public utilities and licensees that practice the accounting methods as described in the text of those Accounts; (3) that application and implementation of those Accounts required Appalachian to install and maintain those Accounts as an integral part of the basic accounts by means of which its basic financial condition is determined and must be reported; and (4) that Appalachian consistently and properly must observe those Accounts whenever it presents financial data properly classifiable in those Accounts, in its reports to this Commission or to the general public, including Appalachian's security holders.

Our Order of December 31, 1962 further specified the manner in which all amounts properly classifiable in those Accounts should be reclassified in Appalachian's basic books of account; and it directed Appalachian to make such reclassification within 30 days.

Except for modifications made below, in the nature of errata, all material points raised in Appalachian's application for rehearing have already been discussed in the opinion and there is no need to repeat what we have already said there.[1] We accordingly find that no useful purpose would be served by granting the stay requested.

At pages 49 and 50 of its application for rehearing, Appalachian points out that the reclassifications directed by finding paragraphs (10) and (11) of our Order would unbalance Appalachian's accounts, insofar as those paragraphs require Appalachian to debit accounts it maintains for state purposes (Account 271.1 and Account 271.2), and to credit accounts prescribed by this Commission. The paragraphs in question should have directed that the debit entries be made

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[1] Appalachian suggests that enactment of the investment tax credit provisions of the Revenue Act of 1962 and the pendency before the Commission and courts of other questions relating to our treatment of tax deductions, requires a stay and reconsideration of our decision here. We find this suggestion without merit. Those matters have nothing to do with the issues of this case.

to Account 271, and we shall so provide below. We shall also order below that the sixth line on mimeo page 9 of our Opinion be deleted; and that the word "stockholders" be substituted for the word "suppliers" in line 14 of the third paragraph on mimeo page 11 of our Opinion.

The Commission further finds:

(1) Appalachian's application for rehearing filed herein sets forth no new facts or principles of law which were not fully considered by the Commission when it issued its Opinion and Order No. 375, or which, having now been considered, warrant any change in, modification of, or rehearing of such Opinion and Order, except as specified below.

(2) There is no justification for, and the public interest would not be served by, granting a stay of Opinion and Order No. 375.

The Commission orders:

(A) Appalachian's application for rehearing filed in the above entitled proceeding is hereby denied, except as specified below.

(B) The entire sixth line on mimeo page 9 of Opinion No. 375 is hereby deleted.

(C) The word "stockholders" is hereby substituted for the word "suppliers" on line 14 of the third paragraph of mimeo page 11 of Opinion No. 375.

(D) The words "Account 271 Earned Surplus" are hereby substituted for the words "Account 271.1 Earned Surplus—Restricted for Future Federal Taxes on Income" that appear on lines 3 and 4 of finding paragraph (10) on page 54 of Opinion No. 375; and for the words "said 'Account 271.1'" that appear on line 8 of said paragraph (10).

(E) The words "Account 271 Earned Surplus" are hereby substituted for the words "Account 271.2 Earned Surplus—Restricted For Future Federal Taxes on Income" that appear on lines 3 and 4 of finding paragraph (11) on page 54 of Opinion No. 375; and for the words "said 'Account 271.2'" that appear on line 8 of said paragraph (11).

(F) Appalachian's application for stay of Opinion and Order No. 375 is denied.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

THE ATLANTIC REFINING COMPANY, DOCKET NO. CI63-576

ORDER GRANTING APPLICATION FOR REHEARING

(Issued February 21, 1963)

On January 25, 1963, The Atlantic Refining Company (Atlantic) filed both an application for rehearing of the Commission's letter order of December 27, 1962, which rejected Atlantic's October 20, 1962, application for a certificate of public convenience and necessity and its related gas purchase contract because the contract contains pricing provisions other than those permitted by Section 154.93, as amended, of the Commission's Regulations under the Natural Gas Act (Act), and a petition pursuant to Section 1.7 of the Commission's Rules of Practice and Procedure for waiver of the requirements of Section 154.93 in order to permit the filing and acceptance of its certificate application and the companion rate schedule.

As Atlantic recognizes, the so-called "*Memphis* type" escalation clause in its contract clearly is prohibited by section 154.93. But we agree that the propriety of such a provision, which is not typically found in contracts between independ-

ent producer and pipelines, was not a matter which engaged the Commission's consideration at the time it adopted its present rule. Moreover it is clear that at least some of the objections which we have had with indefinite escalations are not here presented. The issue, of course, is a general one: Atlantic does not suggest that there are any special circumstances presented by its sale to Montana-Dakota which would warrant waiver here. While we are not presently in a position to make any final determination of the matter we believe that the questions discussed in Atlantic's present petition are sufficiently meritorious to warrant our further study. We shall therefore grant Atlantic's petition for rehearing in order to preserve its rights while we are considering whether or not section 154.93 of the Commission's regulations under the Natural Gas Act should be amended or modified to permit contract provisions like or similar to those incorporated in the Atlantic contract with Montana-Dakota.

Accordingly, the Commission orders:

The application for rehearing filed on January 25, 1963, by The Atlantic Refining Company is hereby granted for the purposes hereinbefore set forth.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

ATLANTIC SEABOARD CORPORATION, DOCKET NO. G–17774

ORDER DENYING APPLICATION FOR REHEARING AND RECONSIDERATION AND REJECTING OFFER OF SETTLEMENT

(Issued February 21, 1963)

On January 25, 1963, Lynchburg Gas Company (Lynchburg or Applicant), an intervenor in the above-entitled proceeding, filed an application for rehearing and reconsideration of our Opinion and Order No. 373 issued December 28, 1962, 28 FPC 1145 requesting that we vacate said opinion and enter a revised opinion and order either denying a certificate of public convenience and necessity or remanding the proceeding for further hearing before the examiner. In the alternative, Applicant proposes an offer of settlement which will be discussed below.

In our opinion and order we granted a permanent certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act to Atlantic Seaboard Corporation (Atlantic) authorizing it to acquire, construct and operate facilities required to activate an underground natural gas storage reservoir designated as Terra Alta Storage Pool X–76 (Terra Alta) in Portland and Union Districts, Preston County, West Virginia.

Lynchburg seeks rehearing on two grounds:

1. Terra Alta, as presently constituted, is not required by the public convenience and necessity. Neither the examiner nor the Commission made adequate findings on the public need to be served.

2. Applicant was denied a fair hearing.

Lynchburg argues that the Commission has failed completely to define how the Terra Alta project would be in the public interest or how it is required by the public convenience and necessity. As we pointed out in opinion 373 and accompanying order, Atlantic's application completely satisfied the standards properly to be considered in determining public convenience and necessity as contained in the Natural Gas Act and as applied in Commission and judicial decisions.

In passing upon the proposed certificate authorization we have considered not just the present but the future public convenience and necessity as well. We

found, based upon the increase in the purchased gas load factor attributable to the operation of Terra Alta, that substantial savings would be reflected in Atlantic's cost of service. The only unresolved question on this point is: When will these savings realized by Atlantic be reflected in tangible consumer benefits? The present lack of sufficient operational experience to resolve the timing of such savings does not supply a sound reason for denying a certificate of public convenience and necessity nor does it lessen the need for the proposed facilities.

As our order provides in detail, when Terra Alta achieves its maximum capability,[1] the Commission, in appropriate proceedings, having an adequate record before it, will then determine the just and reasonable rate for the service projected in this record.

Applicant's contention that it was denied a fair hearing is essentially the same as that raised in its exceptions to the examiner's decision. The Examiner could have received briefs but since Lynchburg has had ample opportunity to present its position, arguments and contentions, and to meet the opposing evidence and argument during the course of the proceeding, we re-affirm our finding that the Examiner's failure to comply fully with our Rules and Regulations did not constitute prejudicial error nor warrant sending the case back for further hearing.

In its settlement proposal, Lynchburg would withdraw its opposition to the Terra Alta project if Atlantic would make available, on reasonable terms, a storage service to its customers. This offer is not timely and goes beyond the scope of the record in the proceeding. The record shows that Atlantic's storage operations are predicated on meeting the requirements of all existing wholesale customers and the service proposed by Lynchburg at this time is neither consistent with Atlantic's operations or the physical design of its pipeline system. In this matter, Atlantic has not requested authority to provide a storage or peaking service; to compel it to do so at the instance of the Applicant would confer validity to a premise which is contrary to our findings and order contained in opinion 373. The offer of settlement must be rejected.

The Commission further finds:

The assignments of error and grounds for rehearing set forth in the application for rehearing and reconsideration filed herein present no new facts or principles of law which were not considered by the Commission when it issued its Opinion 373 on December 28, 1962, or which having now been considered warrant any change or modification of said opinion and order.

The Commission orders:

The application for rehearing and reconsideration filed by Lynchburg Gas Company is hereby denied and its offer of settlement is hereby rejected.

Commissioner Morgan *dissenting.*

Commissioner Ross *dissenting*, would remand the matter to the Examiner to permit the filing of briefs.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

BLACK HILLS POWER & LIGHT COMPANY, DOCKET NO. E-7046

ORDER GRANTING REHEARING AND PRESCRIBING PROCEDURE

(Issued February 21, 1963)

Application was filed on January 24, 1963, by Black Hills Power & Light Company (Applicant) for rehearing on the Commission's order issued December

[1] Estimated to be in 1965–66.

27, 1962, 28 FPC 1121, denying Applicant's request for authority pursuant to Section 204 of the Federal Power Act for the issuance of 10,000 shares of Common Stock pursuant to Applicant's Restricted Stock Option Plan. In this application Applicant states that if it is permitted to do so, it is prepared to show at a hearing that its proposed Restricted Stock Option Plan meets the criteria of Section 204 of the Federal Power Act, as discussed in the order of December 27, 1962. And the rehearing application specified in some detail the nature of the proposed case the Applicant intends to make. We believe that this expanded showing by the Applicant is sufficient to warrant the holding of a formal hearing at which both the Applicant and the Commission's staff can introduce comprehensive evidence upon the basis of which a determination of the propriety of the proposed stock offering may be determined.

The Commission finds:

It will not be inconsistent with the public interest to grant the application for rehearing and to designate Applicant's request for authority pursuant to Section 204 of the Federal Power Act for formal hearing as hereinafter provided.

The Commission orders:

(A) Applicant's petition for rehearing is hereby granted and its request for authority to issue 10,000 shares of Common Stock pursuant to Applicant's Restricted Stock Option Plan is hereby designated for hearing.

(B) The hearing shall be held on June 3, 1963, at 10 a.m. (EDT) in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., and the following procedure is prescribed:

(1) The Applicant shall by April 15, 1963, file with the Commission's Secretary an original and ten copies of all of its testimony (including qualifications of witnesses and exhibits).

(2) The Commission staff shall by May 15, 1963, serve three copies of its testimony (including qualifications of witnesses and exhibits) upon the Applicant.

(3) All of the testimony except exhibits, shall be in question and answer form.

(4) No exhibits (except those of which official notice may properly be taken) shall contain narrative material other than brief explanatory notes.

(5) All exhibits (except those of which official notice may properly be taken) shall contain brief and appropriate titles, and the exhibits shall be fully explained in the prepared testimony by the witness or witnesses sponsoring them.

(6) Each witness shall execute an affidavit adopting the testimony for which he assumes responsibility and an original and two conformed copies of such affidavits shall be filed with his prepared testimony.

(7) Any party submitting more than one exhibit shall enclose a cover sheet listing the title of each exhibit in the sequence they wish them to be marked for identification.

(8) Any motions to strike any part of the prepared testimony and exhibits (prior to cross-examination), shall be filed with the Presiding Examiner or Chief Examiner by May 22, 1963; answers thereto shall be filed by May 29, 1963; and rulings on such motions will be made by the Examiner at the time such testimony or exhibits are offered in accordance with subparagraph (9).

(9) Upon the commencement of the hearing and after appearances, opening statements, and other preliminary matters, the exhibits previously filed, as provided above, will be marked for identification in the sequence directed by the Presiding Examiner; and thereafter the Examiner will require that the affidavits of the respective witnesses and their prepared testimony (together with the qualifications of the respective witnesses) previously filed, as provided above,

be copied into the record as though read, excepting any part or parts of the prepared testimony with respect to which he may have granted motion to strike.

(10) The Presiding Examiner will specify the order of cross-examination for the information of the parties in making their respective witnesses available for cross-examination.

(C) Requests for extension of time concerning the time for any filings specified herein shall be made in writing, served on all parties and filed with the Presiding Examiner or the Chief Examiner (together with a certificate of service) at least ten days in advance of the dates specified herein (or as may have been extended), and any answers thereto shall be filed with the Presiding Examiner within three days after the request for extension.

(D) The Commission's Rules of Practice and Procedure shall apply in this proceeding except to the extent that they are modified or supplemented herein or to the extent that they are further modified or supplemented by the Examiner with the consent of the parties.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MIDLAND PETROCHEMICAL COMPANY, DOCKET NOS. G–20265, G–20266, G–20267, AND G–20268

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF SERVICE, TERMINATING CERTIFICATES, DISMISSING APPLICATIONS, AND ACCEPTING SUPPLEMENTS TO FPC GAS RATE SCHEDULES FOR FILING

(Issued February 21, 1963)

On June 22, 1962, Midland Petrochemical Company (Applicant) filed in Docket Nos. G–20265, G–20266, G–20267, and G–20268 applications pursuant to Section 7(b) of the Natural Gas Act for permission and approval of the Commission to abandon natural gas service as hereinafter described, all as more fully described in the applications in the above-entitled proceedings and in Appendix I hereto.

The abandonment applications herein were filed as amendments to the applications for certificates of public convenience and necessity in the subject dockets which applications requested authorization to continue certain sales of natural gas originally made by Hope Producing Company (Hope) to whose interests Applicant has succeeded. On December 18, 1959, Applicant was granted temporary certificates to continue the sales herein proposed to be abandoned.

In each case the volume of gas has become depleted to the point where it is no longer economically feasible to continue the operation, and Applicant has therefore filed notices of cancellation of its related rate schedules.

Applicant had previously filed certain supplements to complete its rate schedules related to the sales herein proposed to be abandoned. These have not been accepted for filing and therefore will now be accepted and designated as indicated in Appendix II hereto.

Pursuant to due notice, a public hearing was held in Washington, D.C., on February 14, 1963, respecting the matters involved in and the issues presented

by the abandonment applications herein. No petition to intervene or protest to the granting of the applications has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c) (1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption subject to the jurisdiction of the Commission and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sales of natural gas proposed to be abandoned by Applicant, as hereinbefore described and as more fully described in the abandonment application herein and in Appendix I hereto, are subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonments hereinbefore described are permitted by the public convenience and necessity and should be approved as hereinafter ordered.

(4) The temporary certificates heretofore issued to Applicant in the subject dockets should be terminated, and the certificate portions of such applications should be dismissed as moot.

(5) The notices of cancellation of Applicant's related rate schedules should be accepted for filing to become effective on the date on which this order issues and designated as indicated in Appendix I hereto.

(6) The supplements to Applicant's related rate schedules not previously accepted for filing should be accepted and designated as indicated in Appendix II hereto.

(7) The certificates issued to Hope Producing Company for the service which Applicant proposed to continue in the subject dockets should be terminated.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Permission for and approval of the abandonment of service by Applicant, as hereinbefore described and as more fully described in the abandonment applications herein and in Appendix I hereto, are hereby granted.

(B) The temporary certificates heretofore issued in the subject dockets are hereby terminated, and the certificate portions of such applications are dismissed as moot.

(C) The certificates heretofore issued to Hope Producing Company in Docket Nos. G–4802, G–5166, G–5167, and G–5168 for the service which Applicant proposed to continue in the subject dockets are hereby terminated.

(D) The notices of cancellation of Applicant's related rate schedules are accepted for filing to become effective on the date on which this order issues and are designated as indicated in Appendix I hereto.

(E) The supplements to Applicant's related rate schedules not previously accepted for filing are hereby accepted and are designated as indicated in Appendix II hereto.

APPENDIX I

Docket No.	Location	Purchaser	Docket in which Hope Producing Co. was authorized to render service	Notice of cancellation	
				Rate schedule	Supplement No.
G-20265	Monroe Field, Ouachita Parish, La.	Texas Gas Transmission Corp.	G-4802	2	14
G-20266	Monroe Field, Union Parish, La.	Olin Gas Transmission Corp.	G-5166	4	6
G-20267	Monroe Field, Ouachita Parish, La.	Southern Natural Gas Co.	G-5167	1	12
G-20268	do	Olin Gas Transmission Corp.	G-5168	3	12

APPENDIX II

Designation		Description and date of instrument
Rate schedule	Supplement No.	
1		Contract [1] 9-14-45.
1	1	Letter [1] 11-28-45.
1	2	Letter [1] 11-30-45.
1	11	Sheets from Hope's Tariff.[2]
2		Contract [1] 4-16-45.
2	1	Agreement [1] 10-1-45.
2	2	Agreement [1] 12-10-45.
2	3	Agreement [1] 9-9-47.
2	4	Letter [1] 4-9-48.
2	5	Agreement [1] 8-3-48.
2	13	Sheets from Hope's Tariff.[2]
3	11	Do.[2]
4	5	Do.[2]

[1] Filed to convert from predecessor's Tariff Form which was effective prior to June 7, 1954, to Producer Form.
[2] Modifies rate schedule, previously effective by notice of concurrence, to conform to Hope's Tariff.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CITY OF MONROE CITY, MISSOURI, DOCKET NO. CP63-90; CITY OF PERRY, MISSOURI, DOCKET NO. CP63-91

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALES OF NATURAL GAS

(Issued February 21, 1963)

On October 9, 1962, as supplemented on November 5, 1962, the City of Monroe City, Missouri (Monroe) filed in Docket No. CP63-90 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Panhandle) to establish physical connection of its transmission facilities with the proposed facilities of and to sell natural gas to Monroe for resale and distribution in Monroe, all as more fully set forth in the application, as supplemented.

Monroe, located 25 miles north of Panhandle's main transmission line in Missouri, states that it proposes to construct and operate a transmission pipeline from the proposed connection with Panhandle's pipeline to the city gate. Monroe

will transport its own natural gas requirements as well as those of the City of Perry, Missouri, located 10 miles north of Panhandle's pipeline. Monroe will also construct and operate a distribution system within its borders.

Monroe's estimated third year peak day and annual requirements are shown to be 1,983 Mcf and 274,374 Mcf, respectively.

The total cost of Monroe's facilities is estimated to be $750,000, which cost will be financed by the issuance of gas revenue bonds.

On October 9, 1962, as supplemented on December 20, 1962, the City of Perry, Missouri (Perry) filed in Docket No. CP63–91 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle to sell natural gas to Perry for resale and distribution in said city, all as more fully set forth in the application, as supplemented.

Perry will construct and operate a transmission pipeline from its city gate to a connection with the pipeline which Monroe proposes to construct as set forth in the latter's application in Docket No. CP63–90. Monroe will receive Perry's natural gas from Panhandle at the connection proposed in Docket No. CP63–90 and transport and deliver such gas to Perry at the interconnection of Perry's and Monroe's proposed pipelines. Perry will also construct and operate a distribution system within its borders.

Perry's estimated third year peak day and annual requirements are shown to be 722 Mcf and 58,556 Mcf, respectively.

The total cost of Perry's facilities is estimated to be $215,000, which cost will be financed by the issuance of gas revenue bonds.

On November 15, 1962, Panhandle filed its answer to the subject applications stating that it has no objection to rendering the requested service.

Due notice of the filing of the applications and opportunity for hearing thereon has been given by publication in the Federal Register on January 18, 1963, (28 FR 501). No protest or petition to intervene has been filed in these proceedings.

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) Applicant, City of Monroe, Missouri, is a municipal corporation incorporated under the laws of the State of Missouri and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in the City of Monroe.

(3) Applicant, City of Perry, Missouri, is a municipal corporation incorporated under the laws of the State of Missouri and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in the City of Perry.

(4) It is necessary and desirable in the public interest that Panhandle be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Monroe and to sell and deliver up to 1,983 Mcf of natural gas per day to Monroe and to sell up to 722 Mcf of natural gas per day to Perry and to deliver Perry's gas to Monroe for transportation and delivery by the latter to Perry, as set forth in the applications, as supplemented, in Docket Nos. CP63–90 and CP63–91, and as hereinafter ordered and conditioned.

(5) Monroe and Perry should be prepared to receive natural gas from Panhandle within one year from the date of issuance of this order.

(6) The requirement that Panhandle serve Monroe and Perry, as proposed, will not place any undue burden upon Panhandle nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Panhandle Eastern Pipe Line Company be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Monroe and to sell and deliver up to 1,983 Mcf of natural gas per day to Monroe and to sell up to 722 Mcf of natural gas per day to Perry and to deliver Perry's gas to Monroe for transportation and delivery by the latter to Perry, all as hereinbefore described and as more fully set forth in the applications, as supplemented, in Docket Nos. CP63–90 and CP63–91.

(B) Monroe and Perry shall be prepared to receive natural gas from Panhandle within one year from the date of issuance of this order.

(C) Panhandle shall report to the Commission in writing the date of commencement of service to Monroe and Perry within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TRUNKLINE GAS COMPANY, DOCKET NO. CP63–165

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 21, 1963)

On December 10, 1962, Trunkline Gas Company (Applicant) filed in Docket No. CP63–165 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1963, and the operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $2,500,000, and no single project will exceed a cost of $500,000. The proposed facilities will be financed from funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on February 14, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G–882 (8 FPC 850).

(2) The facilities hereinbefore described as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities to take natural gas purchased from producers thereof as proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization hereinafter granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization hereinafter granted, (d) location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $2,500,000, with no single project to exceed a cost of $500,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedures herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedures.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Trunkline Gas Company to construct during the calendar year 1963 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Trunkline Gas Company.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulation.

(C) Applicant shall submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of

the gas sales contracts and the docket numbers of the related producers certificate applications.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $2,500,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP63-69

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 25, 1963)

On September 19, 1962, Cities Service Gas Company (Applicant) filed in Docket No. CP63-69 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the sale and delivery of natural gas to The Gas Service Company (Gas Service) for resale and distribution in the Cities of Nortonville and Winchester, Kansas, and environs, all as more fully set forth in the application on file with the Commission.

Applicant proposes to tap its existing 8-inch pipeline and construct and operate a meter setting with appurtenant regulator equipment in Jefferson County, Kansas, in order to sell natural gas to Gas Service for resale and distribution in the two cities.

The estimated third year peak day and annual natural gas requirements for Nortonville are 420 Mcf and 36,750 Mcf, respectively, and for Winchester are 250 Mcf and 21,875 Mcf, respectively.

The estimated cost of the proposed facilities is $4,180, which cost will be financed from treasury cash.

Applicant states that the proposed sales will be made under Applicant's FPC Gas Rate Schedules F-2, C-2 and I-2.

The application shows that Gas Service has received appropriate authorization from the Kansas State Corporation Commission and has received franchises from the two cities to construct and operate distribution systems therein.

Pursuant to due notice, a public hearing was held in Washington, D.C., on February 12, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas" company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G-298. (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Com-

mission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP63-83

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 25, 1963)

On October 4, 1962, Cities Service Gas Company (Applicant) filed in Docket No. CP63-83 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1963 and the operation of branch lines and meter and regulator equipment to make temporary and permanent direct sales of natural gas from Applicant's existing pipeline system, all as more fully set forth in the application.

The purpose of this "budget-type" application is to enable Applicant to act with reasonable dispatch in establishing new delivery points for certain direct

sales of natural gas without the delay incident to the filing and processing of individual certificate applications.

Applicant estimates that it will have approximately 10 requests for temporary sales in 1963, mostly from road construction contractors, each request involving an estimated average of 40,000 Mcf of natural gas annually, and averaging a cost of approximately $3,500 per installation. Also, Applicant anticipates approximately 30 requests for direct sales to consumers on a permanent basis during 1963, each request involving an average of approximately 85,000 Mcf of natural gas annually, and averaging a cost of approximately $3,000 per installation.

The total cost of the proposed facilities will not exceed a maximum of $125,000 and no single project will exceed a cost of $20,000. The proposed facilities will be financed from treasury cash.

Pursuant to due notice, a public hearing was held in Washington, D.C., on February 13, 1963, concerning the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and delivery of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations thereunder.

(4) The construction and operation of facilities to deliver natural gas as proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization hereinafter granted a statement showing by project: (a) actual final costs, (b) description, (c) location of facilities, (d) name and location of each customer, (e) expected date of termination of service to temporary customers, and (f) estimated annual revenues and annual deliveries to each customer.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $125,000, with no single project to exceed a cost of $20,000.

(8) Deliveries under the authorization hereinafter granted shall be limited to no more than 10 customers on a temporary basis and to no more than 30 customers on a permanent basis; and further, total annual deliveries to all customers under the authorization hereinafter granted shall be limited to a maximum of 2,950,000 Mcf of gas.

(9) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to construct and operate facilities and to deliver natural gas to direct industrial customers as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit within 60 days after the expiration of the authorization hereinafter granted a statement showing by project: (a) actual final costs, (b) description, (c) location of facilities, (d) name and location of each customer, (e) expected date of termination of service to temporary customers, and (f) estimated annual revenues and annual deliveries to each customer.

(D) The certificate issued by paragraph (A) above is limited to construction during the calendar year 1963, and the total expenditures for facilities authorized to be constructed are limited to a maximum of $125,000, with no single project to exceed a cost of $20,000.

(E) Deliveries under the certificate hereinbefore granted are limited to no more than 10 customers on a temporary basis and to no more than 30 customers on a permanent basis; and further, total annual deliveries to all customers under the authorization hereinbefore granted shall be limited to a maximum of 2,950,000 Mcf of gas.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

R. H. GOODRICH, ET AL., DOCKET NO. G-8977, ET AL.

ORDER CONDITIONALLY APPROVING RATE SETTLEMENT PROPOSALS, SEVERING AND TERMINATING PROCEEDINGS AND PRESCRIBING REFUNDS

(Issued February 25, 1963)

There is now before us for consideration Settlement Proposals filed on December 5, 1962, by R. H. Goodrich (Goodrich) in Docket No. G-8977, *et al.*, and on November 28, 1962, by W. H. Cocke (Cocke) in Docket No. G-8978, *et al.* The settlement proposals involve suspension proceedings concerning proposed increased rates filed by Goodrich and Cocke for the sale of natural gas to United Gas Pipe Line Company in the Duck Lake Field, St. Martin and St. Mary Parishes in Southern Louisiana.

These proceedings were consolidated with the proceedings in *Cities Service Company, et al.*, (Cities) Docket No. G-8921, *et al.*, by order issued February 29,

1956.[1] On December 26, 1962, 28 FPC 1108, we issued an order in such consolidated proceeding conditionally approving a rate settlement proposal filed by Cities solely on its behalf, terminating Cities proceedings, and severing the same from these consolidated proceedings. Cities' settlement proposal encompassed a sale by it to United under Cities' FPC Gas Rate Schedule No. 10 in the same unitized Duck Lake Field mentioned above. The circumstances noted in our order of December 26, 1962, *supra*,[2] surrounding such sale by Cities to United are apposite to the sales made by Goodrich and Cocke to United.

In their respective settlement proposals, Goodrich and Cocke incorporated the proposal, terms and reservations made by Cities relevant to the sale to United under Cities FPC Gas Rate Schedule No. 10, which are summarized in the order issued December 26, 1962, *supra*. Accordingly, Goodrich and Cocke also propose to terminate the payment of interest upon applicable refunds on September 30, 1962, as did Cities. For the reason set forth in the December 26 order, we shall require Goodrich and Cocke to pay interest until the date of refund of the excess monies collected, as we did Cities.

The order issued February 29, 1956, mentioned above, also consolidated the proceedings in *C. N. Johnston, et al.*, Docket No. G–9136, *et al.*, with the instant proceedings. We shall sever the Goodrich and Cocke proceedings from the *C. N. Johnston, et al.*, proceedings which are now pending before the presiding examiner.

The instant Settlement Proposals, as herein modified, meet the criteria set forth in the Cities' order issued December 26, 1962, *supra*, and, accordingly, we find them to be in the public interest and they should be approved as hereinafter provided.

Our action herein should not be construed, nor may it be, as constituting approval of any future rate increase, if any, that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate proceedings, involving Goodrich's or Cocke's respective rates and rate schedules.

The Commission finds:

(1) The proposed settlement of the subject proceedings on the basis set forth in Cities Settlement Proposal filed October 12, 1962, as modified, and incorporated by Goodrich and Cocke in their proposals, is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that they be conditionally approved and conditionally made effective subject to the modifications hereinafter ordered.

(2) Good cause exists for approving the settlement rate, for severing and terminating certain proceedings and providing for refunds.

The Commission orders:

(A) The settlement of these proceedings on the basis of the Settlement Proposals, filed herein, as modified, is approved and made effective subject to the following terms and conditions.

(B) The applicable settlement rates set out in Appendix A hereto, are approved and shall be effective as of the date of issuance of this order.

(C) Goodrich and Cocke shall each, over the signature of a responsible officer, file with the Commission, within 15 days from the date of issuance of this order,

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[1] Excepting the proceedings in Docket No. RI63–167.

[2] Also see the order issued on June 28, 1962, in *The Ohio Oil Company, et al.*, Docket No. RI60–92, *et al.*, 27 FPC 1373, where a sale by Ohio to United in the Duck Lake Field is discussed.

in writing an original and one copy of its acceptance or rejection of the terms and conditions of this order.

(D) Within 90 days from the date of this order, Goodrich and Cocke shall each make such filings under its rate schedule as are required to make effective the terms of the Settlement Proposal, as modified.

(E) Within 90 days from the date of this order, Goodrich and Cocke shall each (1) refund, with interest as specified in each docket computed to the date of actual refund, the difference between the rates collected subject to refund on and after July 1, 1958 and the related settlement rates; and (2) report to the Commission, in writing, the amount of refund paid to United, showing separately the amount of principal and interest so paid, and the bases used for such determination, together with releases from United showing receipt of the refunds in conformity with the settlements as modified and approved.

(F) The proceedings in Docket Nos. G–8977, G–8978, G–9570, G–9575, G–12231, G–13610 and G–13611 are hereby severed from the consolidated proceedings heretofore designated as *R. H. Goodrich, et al.*, Docket No. G–8977, *et al.*, which shall be hereafter designated as *C. N. Johnston, et al.*, Docket No. G–9136, *et al.*

(G) Upon full compliance by either Goodrich or Cocke with all the terms and provisions of this order the Section 4(e) proceedings involving their respective FPC Gas Rate Schedules listed in Appendix A hereof shall terminate.

(H) This order is without prejudice to any findings or orders which have been, or may be, made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Goodrich or Cocke, the Commission staff, or any affected party herein, in any proceedings now pending, or hereafter instituted by or against Goodrich or Cocke, or any other companies, person, or parties, affected by this order.

APPENDIX A

Seller	Rate schedule No.	Buyer	Field	Effective rate ¢/Mcf as of 2-13-63	Proposed settlement price ¢ Mcf	Rate suspension docket
W. H. Cocke	1	United Gas Pipe Line Co.	Duck Lake	[1] 21.95	[3] 18.0	G–8978 G–9570 G–13611
R. H. Goodrich	1	United Gas Pipe Line Co.	do	[2] 22.35	[3] 18.0	G–8977 G–9575 G–12231 G–13610 RI63–167

[1] Rate of 22.35¢ suspended but not effective subject to refund in docket No. G–13611.
[2] Rate of 23.74¢ suspended but not effective subject to refund in docket No. RI63–167.
[3] Includes applicable tax reimbursement.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NOS. RP61–19, RP62–7; NATURAL GAS PIPELINE CO. OF AMERICA, DOCKET NO. RP63–6

ORDER INSTITUTING INVESTIGATION, CONSOLIDATING PROCEEDINGS AND DESIGNATING PROCEDURE

(Issued February 25, 1963)

In Opinion No. 367, issued October 25, 1962 (28 FPC 731), a section 4(e) rate proceeding involving Natural Gas Pipeline Company of America (Natural),

the Commission stated that the rate design determined therein would be subject to re-examination in the light of its consideration of the rate design of Midwestern Gas Transmission Company's Southern system in Docket No. RP61–19. On February 18, 1963, the Commission issued an order establishing a procedure for the expeditious hearing of Docket No. RP61–19, p. 320, *supra.*, (which was consolidated with an investigation of the rates of Midwestern's Northern system in Docket No. RP62–7). In order to effectuate the intent expressed in the aforementioned order relating to Natural's rates, it is now appropriate to institute a section 5 proceeding limited to the question of whether the design of Natural's two-part demand and commodity rates is just and reasonable and not unduly discriminatory or preferential. In order to facilitate the prompt resolution of the related rate-design issues, RP63–6 should be consolidated with RP61–19 and RP62–7. The Commission will not at this time set specific dates for the filing of testimony and exhibits relating to Natural. The presiding examiner should have discretion to determine, in the light of his appraisal of the prehearing conference, the stage of the proceedings at which the Natural rate design should be put in issue and the most suitable procedure for trying that issue expeditiously.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Natural Gas Act, particularly Sections 4, 5, and 15 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act (18 CFR, Chapter I), a proceeding is instituted in Docket No. RP63–6 and a public hearing shall be held to determine whether the design of the two-part demand and commodity rate of Natural Gas Pipeline Company of America, is just and reasonable and not unduly preferential or discriminatory.

(B) Docket No. RP63–6 is consolidated for purposes of hearing and decision with Docket Nos. RP61–19 and RP62–7.

(C) The procedure heretofore specified by order of February 18, 1963, in Docket Nos. RP61–19 and RP62–7 shall be followed in these proceedings, but the presiding examiner heretofore designated shall determine the manner in which testimony and exhibits relating to Natural's rates shall be introduced.

(D) Notices and petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the Commission's Rules of Practice and Procedure, Sections 1.8 and 1.37(f) [18 CFR 1.8 and 1.37(f)], on or before March 13, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SOCONY MOBIL OIL COMPANY, INC., DOCKET NO. G–13780

ORDER CONDITIONALLY APPROVING SETTLEMENT PROPOSAL

(Issued February 25, 1963)

On November 7, 1962, Socony Mobil Oil Company, Inc., filed a Petition for Approval of Settlement Proposal. Socony's proposal involves its F.P.C. Gas Rate Schedule No. 198, under which Socony sells gas to Transcontinental Gas Pipe Line Corporation, as well as the pending judicial proceedings in *Socony Mobil Oil Company, Inc.* v. *F.P.C.*, No. 17057, United States Court of Appeals for the District of Columbia Circuit. Those proceedings seek review of our final order in this docket. *Socony Mobil Oil Company, Inc.*, 27 FPC 347, rehearing

denied 27 FPC 675. Socony states that its proposal follows upon discussions with various intervenors in this proceeding. No party has opposed the proposal.[1] In summary, the proposal provides:

(1) The rate to be charged for the future would be that prescribed by our final order herein, which rate is now in effect.

(2) Socony would waive the right to file increased rates prior to July 1, 1967, subject however, to the outcome of any area rate proceeding involving Texas Railroad District Number Three.

(3) Socony would extend the make-up period under the take-or-pay-for provision of its contract to four years.

(4) This Commission would modify its final order herein to reduce by one-third the principal amount of Socony's refund obligation with respect to the period prior to July 5, 1962.[2]

Because the record in this proceeding has been filed in a Court of Appeals we have no power to modify our order (Natural Gas Act, Section 19). We may, however, indicate our approval of the terms of Socony's proposal to become effective only if the petition for review is dismissed. For the reasons stated in our order of December 21, 1962, in the *Catco* proceedings (*Continental Oil Company, et al.*, Docket No. G–11024, *et al.*, 28 FPC 1090), we find Socony's proposal to be in the public interest subject to the conditions set forth below. As in our *Catco* order we find no reason to toll the accrual of interest and shall require the payment of interest until the date of refund of the principal amounts.

The Commission finds:

It is in the public interest and appropriate in carrying out the provisions of the Natural Gas Act that the settlement proposal filed herein be conditionally approved and conditionally made effective subject to the modifications hereinafter ordered.

The Commission orders:

(A) This order shall become effective 15 days after dismissal of any petitions for judicial review of our order of February 9, 1962, herein.

(B) The Settlement Proposal filed herein on November 7, 1962, is approved and made effective subject to ordering paragraph (A), above, and to the following terms and conditions.

(C) Within 60 days from the effective date of this order Socony Mobil Oil Company, Inc., shall refund the principal amounts provided for in the Settlement Proposal plus interest at the rate therein provided until the date of actual refund.

(D) Within 30 days from the effective date of this order Socony shall execute and file all contract amendments and other documents provided for in the Settlement Proposal.

(E) Except as hereby modified our orders of February 9, 1962 (27 FPC 347) and April 6, 1962 (27 FPC 675) shall remain in full force and effect.

(F) The approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against applicant, particularly any proceeding under Section 5 of the Natural Gas Act, and is

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[1] We expressly note, however, that on December 10, 1962, Philadelphia Electric Company filed a response which reserved Philadelphia's position as to certain matters not here in issue and clarified that position as to certain contingencies which may hereafter arise under the settlement but need not now be anticipated.

[2] This date is based upon our orders granting a temporary stay of the refund provisions of our final order herein.

without prejudice to claims or contentions which may be made by the Commission, applicant, the Commission staff, or any affected party herein in any other proceeding.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP63-166

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 25, 1963)

On December 10, 1962, Texas Eastern Transmission Corporation (Applicant) filed in Docket No. CP63-166 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1963, and the operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally co-extensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $5,000,000, and no single project will exceed a cost of $500,000. The proposed facilities will be financed from funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on February 14, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Texas Eastern Transmission Corporation, a Texas corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of March 30, 1949, in Docket No. G-1089 (8 FPC 228).

(2) The facilities hereinbefore described as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities to take natural gas purchased from producers thereof as proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization hereinafter granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization hereinafter granted, (d) location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $5,000,000, with no single project to exceed a cost of $500,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Texas Eastern Transmission Corporation to construct during the calendar year 1963 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Texas Eastern Transmission Corporation.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $5,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

IDAHO POWER COMPANY, PROJECT NO. 1971

ORDER APPROVING PROJECT EXHIBITS AND ADJUSTING ANNUAL CHARGES

(Issued February 26, 1963)

On July 9, 1956, November 14, 1958, July 25, 1961 and December 5, 1962, Idaho Power Company, licensee for major Project No. 1971, filed applications for Commission approval of certain revised project exhibits showing the Brownlee and Oxbow boundaries, the Boise-Brady No. 2, 230 kv transmission line areas and boundaries and the Oxbow spillway as constructed. On March 23, 1960, Exhibit F (revised) was filed, but Commission approval of this exhibit is not required.

Commission approval of the revised exhibits filed in connection with the July 9, 1956 application relating to the Oxbow Development would show that development as occupying 1,062.22 acres of lands of the United States, with resultant annual charges for such occupancy in the amount of $2,549.33 effective as of August 1, 1955, the effective date of the license.

Commission approval of the revised exhibits filed in connection with the November 14, 1958 application relating to the Brownlee Development would show that development as occupying 6,499.54 acres of lands of the United States, with resultant annual charges for such occupancy in the amount of $15,598.90, effective as of August 1, 1955.

Commission approval of the revised exhibits filed in connection with the July 25, 1961 application relating to the Boise-Brady No. 2, 230 kv transmission line would show that line as occupying a 150-foot wide right-of-way 114.029 miles long on lands of the United States, with a resultant increase in annual charges for such occupancy in the amount of $39.10, effective as of November 1, 1960, the first day of the month following the operation of the line.

Inasmuch as Instrument No. 24 of the license for Project No. 1971, issued August 24, 1961, provides that the licensee shall design the structures of the Low Hells Canyon development for maximum tailwater elevation at 1,515 feet, and Exhibit M now part of the license, received in the Commission May 15, 1953 provides for a tailwater elevation of 1,475 feet, the last-mentioned exhibit should be eliminated from the license.

The Commission finds:

(1) The following described revised exhibits conform to the Commission's rules and regulations and should be approved as part of the license for the project:

Exhibit J, inadvertently designated in the license as (FPC No. 2132-2) rather than (FPC No. 2132-1), redesignated as (FPC No. 1971-24); Exhibit J (FPC No. 2133-1), redesignated as (FPC No. 1971-30); (FPC No. 1971 -111, -192 and -193); K (FPC Nos. 1971-112 through -116, -162 through -189, and -194); L (FPC Nos. 1971-106, -107 and -108), revised by the staff in November, 1962; (FPC No. 1971-191); and Exhibit M, revised by the licensee on July 6, 1961.

(2) The following described exhibits, now part of the license for the project and which have been superseded, should be eliminated from the license:

Exhibits J (FPC Nos. 2132-2, 2133-1) (as revised in Instrument No. 2 of the license dated November 3, 1955) (1971-2, -154 and -155); K (FPC No. 1971-157); L (FPC Nos. 1971-106, -107 -108; and -160); M (July 1, 1960) for Boise-Brady Transmission Line; and M for the Hells Canyon Development, filed in the Commission May 15, 1953.

(3) The increased annual charges for recompensing the United States for the use of additional lands of the United States by the project facilities, including the transmission line, are reasonable as hereinafter fixed and specified.

The Commission orders:

(A) The revised exhibits described in finding (1) above are hereby approved as part of the license for Project No. 1971, and the exhibits described in finding (2) above are hereby eliminated from the license.

(B) Paragraph 5 of the license is hereby revised to read as follows:

The project consists of:

(a) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license or application for amendment thereof and which are designated and described as follows:

Brownlee development

Exhibit	FPC No.	Showing
J	1971-30 (revised)	General map.
K	1971-162 to 189 incl.	Land maps.

Oxbow development

Exhibit	FPC No.	Showing
J	1971-111	General map.
K	1971-112 to 116 incl.	Land maps.
J-K	1971-98	General plan Oxbow-Brownlee Transmission Line.

Hells Canyon development

Exhibit	FPC No.	Showing
J	1971-24	General map.
K	1971-190	Land map.

Oxbow—Brownlee Transmission Line included under Oxbow project.

Oxbow—Pallette Junction—Hells Canyon Transmission Line

Exhibit	FPC No.	Showing
J-K	1971-145	General plan—detail map.

Pallette Junction—Mountain Sheep (Divide Creek) Transmission Line

Exhibit	FPC No.	Showing
J-K	1971-146	General plan—detail map.

Boise—Brownlee—Baker Transmission Line

Exhibit	FPC No.	Showing
J	1971-61, -62	General map.
K	1971-63, -64	Detail map.

Boise—Brady No. 2 Transmission Line

Exhibit	FPC No.	Showing
J	1971-192, -193	General map.
K	1971-156, -158, -159 and -194	Detail map.

(b) All project works consisting of:

(1) The Brownlee development consisting of a rock-fill dam having a maximum height of about 395 feet and a crest length of about 1320 feet in the Snake River at river mile 284.6, and a concrete spillway section surmounted by tainter gates, a reservoir with a usable storage capacity of 1,000,000 acre-feet at a draw down of 101 feet below elevation 2077 feet; a controlled intake, power tunnels and penstocks leading to a powerhouse containing four turbines each rated at 142,000 horsepower and connected to a 90,100 kilowatt generator operating under a gross static head of 272 feet, with provision for an additional intake and tunnel and the future installation of two similar units in an extension to the powerhouse; and transmission facilities; the location, nature and character of the project works are more specifically shown and described by the exhibits hereinbefore cited and other exhibits which are designated and described as follows:

Exhibit	FPC No.	Showing
L	1971-150	General plan.
	1971-151	Dam section and elevation.
	1971-152	Penstock plans and spillway section.
	1971-153	Powerhouse plans and section.
M		General description and specifications of equipment, received May 15, 1953.

(2) The Oxbow development, consisting of a rockfill dam having a maximum height of about 180 feet and a crest length of about 945 feet at elevation 1820 feet in the Snake River at river mile 273.2; the Oregon spillway is a tainter gated controlled spillway and the Idaho spillway is a fuse plug structure; a reservoir with usable storage capacity of 5,500 acre-feet at a drawdown of 5 feet below elevation 1,805 feet; a controlled intake; two power tunnels across the Oxbow; two surge tanks; four penstocks; a powerhouse containing four turbines each rated at 73,000 horsepower and connected to a 47,500 kilowatt generator operating under a gross static head of 122 feet; provision for a future tunnel and installation of one similar unit in an extension to the powerhouse; a 230 kv double circuit steel tower transmission line extending from Oxbow power plant approximately 10.4 miles to the Brownlee power plant switchyard; the location, nature and character of the project works are more specifically shown and described by the exhibits hereinbefore cited and other exhibits which are designated and described as follows:

Exhibit	FPC No.	Showing
L	1971-58	Power intake and power conduit; plan, profile and sections.
	1971-59	Powerhouse plans and section.
	1971-106 (rev.)	General plan.
	1971-107 (rev.)	Dam and spillway plan.
L	1971-108 (rev.)	Dam and spillway elevation and sections.
M (1/14/58)		General description and specifications of equipment.
M (1/15/58)		General description and specifications of equipment (Oxbow—Brownlee Transmission Line).

(3) The proposed low Hells Canyon development, to consist of a rockfill dam having a maximum height of 320 feet and a crest length of 860 feet at elevation 1696 feet in the Snake River at river mile 247.5 and a concrete spillway section surmounted by tainter gates, creating a reservoir with a usable storage capacity of 11,200 acre-feet at a drawdown of 5 feet below elevation 1683 feet; an intake and power tunnel and penstocks leading to a powerhouse; a powerhouse containing initially five turbines each rated at 84,000 horsepower and connected to a 54,400 kilowatt generator operating under a gross static head of 208 feet, with provision for an additional tunnel and intake and the future installation of two turbines each rated at 105,000 horsepower and connected to a 68,000 kilowatt generator in an extension to the powerhouse; and transmission facilities; the location, nature, and character of which are more specifically shown and described by the exhibits heretofore cited and by other exhibits which also formed part of the application for license.

Transmission Lines:

(4) The following transmission lines are part of the license, the location, nature and character of the project works are more specifically shown and described by the exhibits hereinbefore cited and other exhibits which are designated and described as follows:

(a) Oxbow—Brownlee (included under Oxbow development).

(b) Oxbow—Pallette Junction—Hells Canyon.

A 230 kv double circuit steel tower transmission line extending from the Oxbow power plant approximately 20.5 miles in a northerly direction to Pallette Junction, thence easterly approximately 8 miles to the proposed Hells Canyon development;

Exhibit M (Revised 4/2/59) General Description and Specifications of Equipment

(c) Pallette Junction—Mountain Sheep (Divide Creek).

A 230 kv single circuit transmission line extending approximately 45.2 miles in a northerly direction from Pallette Junction to a point on the Idaho bank of the Snake River referred to as Mountain Sheep or Divide Creek;

Exhibit M (Revised 4/2/59) General Description and Specifications of Equipment

(d) Boise—Brownlee—Baker.

A 230 kv double circuit steel tower line about 100 miles in length extending from the Brownlee Hydroelectric Plant to Boise Bench substation near Boise, Idaho; and 230 kv single circuit wood tower line about 43 miles in length extending from Brownlee Hydroelectric Plant to Quartz Substation near Baker, Oregon;

(e) Boise—Brady No. 2.

A 230 kv single circuit transmission line extending from the Boise-Bench substation for a distance of about 186.6 miles to Brady substation near American Falls;

Exhibit L (FPC No. 1971–161) Transmission Line Structure Design.

Exhibit L (FPC No. 1971–191) Transmission Line Structure Design.

Exhibit M (Revised 7/6/61) General Description and Specifications of Equipment.

(f) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) Article 44 of the license is revised to read as follows:

Article 44. The Licensee shall pay to the United States the following annual charges:

(a) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, one (1) cent per horsepower on the authorized installed capacity of 1,268,000 horsepower, plus two and one-half (2½) cents per 1,000 kilowatt-hours of gross energy generated by the project during the calendar year for which the charge is made.

(b) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands used for transmission line right-of-way $839.72 effective March 1, 1959, and $2,208.07 effective November 1, 1960.

(c) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands excluding transmission line right-of-way:

Development	Amount	Effective date
Brownlee	$15,598.90	Aug. 1, 1955
Oxbow	2,549.33	Do.
Total	18,148.23	Do.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgement of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SLADE, INC. (OPERATOR), DOCKET NOS. G–19986 AND RI61–10; SLADE, INC., DOCKET NO. RI60–147; SLADE, INC. (OPERATOR), ET AL., DOCKET NO. RI60–179; AREA RATE PROCEEDING, DOCKET NO. AR61–1

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued February 27, 1963)

Slade, Inc. (Slade) on January 28, 1963 tendered for filing a document styled an "Application For Rehearing" of Opinion No. 376, 29 FPC 11, issued in the

above-entitled proceedings on January 3, 1963. In that opinion we found that the record did not permit a proper determination of Slade's rates and concluded that under the special circumstances of this case it would be more appropriate to make a determination of the justness and reasonableness of Slade's rates in connection with area rate proceedings. Accordingly, the rate proceedings in Docket Nos. RI60–147 and RI60–179 were consolidated with the Permian Basin area rate proceeding in Docket No. AR61–1, and the rate proceedings in Docket Nos. G–19986 and RI61–10 will be consolidated with an appropriate area rate proceeding.

Under the Natural Gas Act and the Commission's Rules, an Application for Rehearing may only be filed to a final order. The action here complained of by Slade cannot possibly be construed as constituting a final order. Accordingly, we shall treat the document tendered by Slade as a motion for reconsideration.

In support of its motion Slade states, *inter alia*, that (1) the justness and reasonableness of Slade's proposed rates should be determined on the basis of Slade's company-wide cost of service presentation at least insofar as they cover the sale of Slade's own interest-owned gas; (2) decision with respect to the Sinton Dome plant sales should not be deferred to a future unscheduled area rate proceeding; (3) decision as to Slade's wellhead sales in Texas Railroad District No. 7–C were improperly placed in the Permian Basin area proceeding because it will be at least a year and a half before a Commission decision is reached, with possibly two more years to elapse for judicial review, and further because under outstanding Commission orders a producer is not permitted in an area rate proceeding to present evidence as to his own needs; (4) the Commission's action is inconsistent with the construction of Section 4(e) by the court in *Minneapolis Gas Co.* v. *F.P.C.*, 294 F. 2d 212 and (5) the Commission's action is inconsistent with a number of previous cases in which producers were permitted to utilize a company-wide cost of service presentation.

Slade misconstrues the import of our opinion in arguing that the lawfulness of Slade's rates should be determined at least to the extent of Slade's interest in gas sold pursuant to its rate schedules. It is our view that an individual interest owner in a joint venture is not entitled to a rate different from the rate to which the joint venture as a separate entity is entitled. As we stated in our opinion the lawful rate under Section 4(e) for the sale of gas by a joint venture should be determined on the basis of costs applicable to that joint venture. Slade's company-wide cost of service presentation relates only to its own net working interest in gas production arising out of various joint ventures in which it participates, including but not limited to those involved here. Such evidence does not afford a basis for determining the lawfulness of Slade's rates in any respect, even assuming *arguendo* that Slade with respect to a particular joint venture might be entitled to a higher rate than the joint ventures as a group.

We are aware that Slade as the operator of the several joint ventures involved in the wellhead sales in issue was required to file for all non-signatory interest holders under our rules. We are also aware that in some instances in the past we have considered the justness and reasonableness of the price for gas sold from such joint ventures on the basis of the company-wide costs of the venturer who happened to be the operator. But we have determined here, and now reiterate, that, at least in situations such as the present one where the operator has only a minor interest in the ventures in issue and his other activities are of limited nature, the general deficiencies of individual company cost-of-service adverted to in *Phillips*, 24 FPC 537, are so magnified that no reliance upon the technique as a pricing system is possible. This means, we recognize that *Slade*

has gone through a hearing in vain; but our failure to terminate the proceeding after we decided in the *Phillips* decision to move to area pricing could not and did not guarantee we would proceed to decision on Slade's basis even if we determined it led to a basically fallacious result.

Slade misconstrues the import of our opinion and of our rules, as well as the nature of its own rate filing in arguing that the lawfulness of its rates should be determined on the basis of its company-wide costs at least to the extent of Slade's interest in gas sold pursuant to its rate schedules. It has been and remains our view that an operator of a joint venture making a sale in interstate commerce, must file for all non-signatory venturers and is not himself entitled to a rate different from that which the venturers as a group are entitled. As we stated in our opinion, however, the lawful rate under Section 4(e) for the sale of gas by such joint venturers should be determined on the basis of costs applicable to the group as a whole.

Even if Slade were now to make an offer to show the costs of its other venturers,[1] we would refuse to entertain it, in view of the fact that these sales are in the Permian Basin and are already subject to the outcome of the proceeding there. We certainly will not accept Slade's suggestion that having filed for the entire joint venture as required by our rules, we should now permit it to secure a price for its share of the gas, leaving the other interest holders high and dry. Such a solution (coupled with requiring all interest holders to file separately) may, as we suggested in *Phillips*, be the consequence of following cost-of-service to its logical extremes. But we have no intention pending conclusion of the area price hearings of entering the impassable administrative thicket such a procedure would entail.

In arguing that the proceedings involving its wellhead sales should not have been placed in the Permain Basin proceeding because of the time factor, Slade apparently assumes that if the proceedings were remanded to the examiner there would be a much shorter period of time required for a Commission decision. Slade is and has been a respondent in the Permain Basin area rate proceeding (Docket No. AR61–1) and its prospective rates for sales in that area will be determined in the Permain proceeding. Since the direct cases of all parties will shortly be a matter of record therein, and the hearing concluded in a few months, reopening of the Slade proceedings would not be warranted. Slade has been required to submit its operating and cost data in the area proceeding for incorporation in the composite industry data of record in that proceeding. For the reasons indicated in our previous orders in Docket No. AR61–1, Slade's individual presentation is not competent evidence in the area proceeding at this juncture.

The *Minneapolis Gas* case, *supra*, cited by Slade is inapposite here. In that case the court ruled that the Commission could not terminate a rate proceeding under Section 4(e) without making a determination of the justness and reasonableness of the rate involved therein. In the instant case, however, we did not purport to terminate these proceedings but in view of the inadequate record have merely chosen a more appropriate means of making the determination required under Section 4(e). And we did so after fully explaining our reasons therefor. See *Wisconsin* v. *F.P.C.*, 303 F. 2d 380, C.A.D.C., pending on *certiorari* Nos. 72–74, this term.

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[1] Slade's protestation that it does not know and might not be able to determine the costs of the other venturers for whom it serves as operator is hardly persuasive. If they were advised that their chance of recovering a rate increase depended upon such information it seems inconceivable that they would refuse to supply it.

We recognize, of course, that there has not yet been initiated an area rate proceeding for the area in which Slade's plant sales are made. We fail to understand, however, how the foregoing situation places Slade in any worse position than any other producer involved in a Section 4(e) proceeding with respect to production in an area for which there is at the present time no area proceeding in progress. Nor do we think that Slade should be placed in any better position with respect to its plant sales in view of the circumstances involved herein. The deficiencies in the present record were pointed out in our opinion.[2] It was also explained why the individual cost-of-service approach was particularly inappropriate with respect to Slade's plant sales. In this connection we also note Slade's statement that it cannot show the costs applicable to producers making sales to Slade at the plant. Slade's position merely reinforces our conclusion that a Section 4(e) determination here must await an area proceeding.

The other matters referred to by Slade in its motion have been adequately disposed of by our discussion in Opinion No. 376 and need not be reiterated here.

The Commission orders:

For the reasons set forth above the motion for reconsideration, styled as an application for rehearing, filed by Slade on January 28, 1963 in these proceedings is hereby denied.

Commissioner Ross *dissenting*, filed a separate statement.

Commissioner Morgan *dissenting* concurred in the statement filed by Commissioner Ross.

Ross, *Commissioner*, dissenting:

Upon reconsideration I believe this proceeding should be remanded to the Examiner to permit the introduction of evidence considered necessary for resolution of the issues herein.

In the recent *Hunt* case (Opinion No. 365), issued October 17, 1962 (28 FPC 623), a unanimous Commission stated its intention to continue to process and decide Section 4(e) proceedings involving individual companies as promptly as the record in each case permits. We explicitly reaffirmed this intention in the initial opinion in this case. I cannot reconcile this statement of policy with the majority's action here.

In the *Hunt* case, *supra*, the Commission gave the applicants a further opportunity to justify the proposed rate increases because the standards by which the Commission stated it would make its determination had not previously been announced. Here, however, despite the majority's acknowledgment that the standards by which it views this case were enunciated for the first time in the initial opinion herein, it refuses to take the action adopted in *Hunt*, *supra*.

Slade filed the instant rate increases in late 1959 and early 1960. Through all the stages of this proceeding, Slade conscientiously attempted, through conference and exchange of views, to submit a clear and concise evidentiary record

[2] With regard to its plant cost-of-service, Slade claims the record is clear that Slade's unit production costs were used only for Slade's share of gas compressed at the plant and that the share of gas compressed at the plant attributable to the other venturers involved with Slade was computed at the applicable test period contract prices. Gas is sold to the plant by two joint ventures from wells on the J. D. Hollan and McDaniels leases in San Patricio County, Texas, which are operated by Slade and in which Slade is a joint venturer with interests of 75% and 25%, respectively. We note that a number of these venturers are directly affiliated with Slade (T. 124–125). Under these circumstances there can be no justification, even assuming *arguendo* that it would otherwise be proper here, for including the contract price with respect to affiliated venturers in Slade's cost-of-service.

under the principles thought controlling at the time. Slade's efforts in this respect permitted a brief hearing[1] after which a stipulation was entered limiting the controverted cost of service questions and defining the remaining areas of conflict. The Examiner's decision was released November 1, 1961 and exceptions were filed November 21, 1961. This case has been before us since that time. In my opinion, Slade deserves better treatment than it has received from the majority. As a matter of fact, I believe we are required to make a decision in this case as quickly as possible, under the rationale of the *Minneapolis Gas* case.[2] While it is true, as the majority suggests, that this case is not being terminated without a decision on the merits (the situation in *Minneapolis Gas, supra*) there is little practical difference between terminating a proceeding without decision, and placing it in a never-never land by splitting it into one area rate proceeding, the final decision which is far from imminent, and into a second area rate case which is not even off the ground as yet.

The majority's opinion presumably[3] describes what factors are considered appropriate to permit a decision in this case. In my opinion we should provide for the introduction of evidence on these factors in the quickest and least complicated manner, which I believe consists in remanding the case to the Examiner.

Commissioner Morgan has authorized me to state that he concurs in this dissent.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EXCEPTIONS TO INTERMEDIATE DECISIONS—REPLIES—STATEMENTS IN SUPPORT, DOCKET NO. R-233

ORDER NO. 263

AMENDING § 1.31 OF RULES OF PRACTICE AND PROCEDURE

(Issued February 28, 1963)*

The Commission, constantly searching for means to improve its procedures, has before it a suggestion that provision be made in its Rules of Practice and Procedure for the filing of responses to exceptions to the intermediate decisions of its hearing examiners. We recognize that adding another step in the hearing procedures will, to some extent, add to the mass of pleadings and delay the earliest date for a Commission decision by at least the response period provided. It is our view, however, that such a provision will permit parties to direct themselves to matters raised for the first time in exceptions, and that this will not only add an additional element of fairness to our procedures but should actually result in expediting Commission action on appeals from examiners' decisions.

We are, therefore, amending our rules to provide for replies to exceptions. The amendment also permits the filing of a statement in support of an examiner's decision. It should be noted, however, that only the one additional step in our proceedings is provided. Counter responses will not be entertained except when the Commission, upon motion, expressly authorizes their submission. In order to prevent unnecessary reargument of points already covered in pleadings

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[1] The hearing required only three days and 242 pages of transcript.

[2] *Minneapolis Gas Company* v. *F.P.C.*, 294 F. 2d 212 (C.A.D.C. 1961).

[3] Use of the word "presumably" seems necessary, for while the Commission has issued opinions in 4(e) proceedings describing factors it considers relevant, we have not as yet decided a single such case involving producers.

*Published in the Federal Register on March 7, 1963 (28 F.R. 2233).

filed by the parties, we are limiting the newly authorized replies to a total of 25 pages.

It appears that the amendment adopted herein pertains to Commission practice and procedure and hence that section 4 of the Administrative Procedure Act is not applicable.

The Commission finds:

(1) The amendment adopted herein is necessary and appropriate for the purposes of administration of the Federal Power and Natural Gas Acts.

The Commission, acting pursuant to the authority granted by the Federal Power Act, as amended, particularly sections 308 and 309 thereof (49 Stat. 858; 16 U.S.C. 825g, 825h) and the Natural Gas Act, as amended, particularly sections 15 and 16 thereof (52 Stat. 829, 830; 15 U.S.C. 717n, 717o) *orders:*

(A) Paragraph (a) of § 1.31, Rules of Practice and Procedure, Subchapter A, Chapter I, Title 18 of the Code of Federal Regulations, is amended to read as follows:

(a) *Exceptions, filing of.* Any party or staff counsel desiring to appeal to the Commission may, within 20 days after the service of a copy of an intermediate decision (initial or recommended by subordinates, or tentative by Commission), or such other time as may be fixed by the Commission, file exceptions thereto. Statements in support of the decision, in form similar to statements of exceptions, may be filed within the same period. Replies of no more than 25 printed pages in length may be filed within 10 days of service of the exceptions. No further pleadings in response to replies will be entertained unless the Commission, upon motion or its own initiative, so orders. Exceptions, statements in support and replies shall conform to the requirements of §§ 1.15, 1.16 and 1.17, but need not be verified under oath.

[Secs. 308, 309, 49 Stat. 858, 16 U.S.C. 825g, 825h; secs. 15, 16, 52 Stat. 829, 830, 15 U.S.C. 717n, 717o.]

(B) This amendment will become effective on April 1, 1963.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

[LETTER REJECTING AMENDATORY AGREEMENT]

February 13, 1963*

Humble Oil & Refining Company [CI62-847]
P.O. Box 2180
Houston 1, Texas

Attention: Messrs. John J. Carter and Jesse H. Foster

Gentlemen: This is with reference to your letter of January 15, 1963, submitting for filing an amendatory agreement dated June 14, 1962, which amends a gas sales contract dated August 7, 1952 (Humble's FPC Gas Rate Schedule No. 302). Since the amendatory agreement includes pricing provisions other than those permitted by Section 154.93 of the Commission's Regulations, it is hereby rejected in accordance with Section 154.100 of the Regulations. All available copies are returned herewith.

This rejection is without prejudice to the resubmittal of an original and two copies of your application which do not contain the unacceptable pricing provisions.

Very truly yours,

J. H. GUTRIDE, *Secretary.*

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*Reconsideration denied, April 18, 1963, 29 FPC 774. Petition for Review filed on June 13, 1963, in *Humble Oil & Refining Company* v. *F.P.C.* (CA5 No. 20616).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

ALABAMA-TENNESSEE NATURAL GAS COMPANY, LOCKET NO. CP62-197

FINDINGS AND ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 4, 1963)

On December 3, 1962, Alabama-Tennessee Natural Gas Company (Applicant) filed in Docket No. CP62-197 an application to amend the order issued in said docket on May 18, 1962, so as to provide that the compressor unit authorized by said order to be operated on a standby basis may also be operated in such manner as to enable Applicant to serve the City of Huntsville, Alabama, an existing customer, with additional volumes of natural gas of up to 1,000 Mcf per day, when and if required by Huntsville during the 1962-63 winter season, all as more fully set forth in the application to amend.

Huntsville has advised Applicant that because of the increased activity at the Redstone Arsenal and the concomitant increase in residential construction in the Huntsville area, it has been necessary to reexamine the previous estimates of Huntsville's 1962-63 peak day requirements. On the basis of that reexamination, Huntsville now estimates that its peak day requirements for the 1962-63 winter season will exceed its previous estimates by approximately 1,000 Mcf per day. Huntsville has also advised Applicant that Huntsville's peak shaving plant lacks the necessary capacity required to provide the additional peak day volume needed for space heating. Accordingly, Huntsville has requested Applicant to supply up to 1,000 Mcf of gas in addition to that heretofore shown to be necessary.

Notice of the application to amend was issued on January 17, 1963, and published in the Federal Register on January 24, 1963 (28 F.R. 661). No protest, request for hearing, or petition to intervene has been received.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity required that the order of the Commission issued May 18, 1962, in Docket No. CP62-197, 27 FPC 904, be amended to authorize Applicant, Alabama-Tennessee Natural Gas Company, to operate the subject facilities to serve the City of Huntsville, Alabama, with additional volumes of gas up to 1,000 Mcf per day, when and if required during the 1962-63 winter season.

The Commission orders:

(A) The order of the Commission issued May 18, 1962, in Docket No. CP62-197, be and the same is hereby amended to authorize Applicant, Alabama-Tennessee Natural Gas Company, to operate the subject facilities to serve the City of Huntsville, Alabama, with additional volumes of gas up to 1,000 Mcf per day, when and if required during the 1962-63 winter season.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

FLORIDA GAS TRANSMISSION COMPANY (FORMERLY COASTAL TRANSMISSION CORPORATION), DOCKET NO. CP61-287

FINDINGS AND ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 4, 1963)

On January 21, 1963, Florida Gas Transmission Company (formerly Coastal Transmission Corporation) (Movant) filed in Docket No. CP61-287 a motion for extension of time within which to complete construction and place in actual operation certain facilities authorized by the Commission's order of July 27, 1962, 28 FPC 231, in the subject docket. Said order required the facilities to be completed and placed in actual operation within six months from the date on which the order was issued.

The lateral pipeline to the Pecaniere Field authorized by the order of July 27, 1962, has been completed and placed in operation; however, Movant has encountered difficulty in obtaining the necessary right-of-way for the certificated lateral pipelines to the Lake Fausse Point Field and the Lake Mongoulois Field due to the proliferation of land ownership in the areas involved.

By notice issued January 23, 1963, the time for the completion of construction and placing facilities in operation was extended to and including April 29, 1963. In the subject motion Movant has requested an extension through July 27, 1963.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order of July 27, 1963, in Docket No. CP61-287 be amended to extend the time for the completion of construction and placing the facilities in actual operation as hereinafter ordered.

The Commission orders:

(A) The order of July 27, 1962, in Docket No. CP61-287, be and the same is hereby amended to extend the time for the completion of construction and placing the facilities in actual operation to and including July 27, 1963.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

HOPE NATURAL GAS COMPANY, DOCKET NO. CP63-171

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 4, 1963)

On December 17, 1962, Hope Natural Gas Company (Applicant) filed an application in Docket No. CP63-171 pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the installation of an 1,100 horsepower engine in its Bridgeport Storage Compressor Station to replace four old and obsolete 500 horsepower engine units now installed there.

Applicant states that the four engine units to be replaced are old, unreliable

and costly to operate and that a new engine of 1,100 horsepower capacity can do the service more efficiently and economically than the four units to be replaced. They pump natural gas into and out of Applicant's storage field in Harrison and Taylor Counties, West Virginia which serve several distribution market areas in West Virginia.

The estimated cost of the replacement facilities is $275.000, and the cost of removal of the old units is $13,000.

No change in existing service will result from the proposed installation and replacement.

Pursuant to due notice, a public hearing was held in Washington, D.C., on February 25, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Hope Natural Gas Company, is "a natural gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of May 26, 1942, in Docket No. G–100 (3 FPC 151).

(2) The facilities hereinbefore described, all as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Hope Natural Gas Company, to construct, operate and replace facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall complete the authorized facilities and place them in operation within 6 months from the date of the order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

HURLEY OIL AND GAS COMPANY, DOCKET NO. G–17775

ORDER DENYING RECONSIDERATION AND MODIFICATION OF ORDER

(Issued March 4, 1963)

On February 8, 1963, Hurley Oil and Gas Company (Hurley) filed an application for reconsideration and modification of the Commission's order of January 14, 1963, 29 FPC 71, wherein, among other things, we vacated our letter order of June 29, 1960, reinstated our letter order of March 11, 1959, and referred to the presiding examiner in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, Hurley's motion to remove the price refund condition from the temporary certificate issued to Hurley on March 11, 1959. We noted in our order of January 14, 1963, that Hurley had failed to serve a copy of its "Motion to Remove Price Refund Condition From Temporary Authorization" upon the New York Public Service Commission (New York), an intervener in the proceeding in Docket No. G–17775. As a result thereof New York had not had an opportunity to respond to the motion. Hurley had previously accepted a temporary certificate with the price refund condition contained therein, and, under the circumstances, it was proper that the amending letter order be vacated and the original temporary certificate be reinstated.

Hurley, in its application for reconsideration, argues that Section 7(c) of the Natural Gas Act provides for the issuance of temporary certificates without notice or hearing on an *ex parte* basis and that modification of the temporary certificate assumes merely the same notice requirements that the temporary certificate itself assumes. It argues that there is no provision for hearings on temporary certificates, and that New York has no standing in the matter of the temporary. It further argues that there can be no proceeding under a temporary certificate and since notice procedures need be filed only "in proceedings pending before the Commission" that New York was not entitled to a copy of the motion to amend the temporary certificate. Finally, Hurley argues that the only evidence permitted for the exercise of the Commission's discretion upon the granting of a temporary certificate is that which demonstrates the existence of an emergency. It states that there can be no additional evidence introduced by either Hurley or New York pertaining to the temporary authorization and, therefore, nothing for the presiding examiner to rule upon.

There is no question but that the Commission may issue a temporary certificate without notice or hearing. Section 7 of the Natural Gas Act specifically provides that "the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, *without notice or hearing*, pending the determination of an application for a certificate." (Emphasis added.) In fact, in this case the Commission did issue to Hurley, without notice or hearing, a temporary certificate conditioned upon Hurley refunding to Transco any amounts in excess of the amount resulting from the rate finally determined to be proper. Hurley accepted this temporary certificate. At that time New York's interests were protected by this refund condition. However, when Hurley moved to remove the price refund condition, it could be anticipated that, New York's interests having been affected, New York would desire to respond. Hurley had full notice that New York was a participant in the proceeding. New York's notice of intervention had been served upon Hurley; the Commission's order recog-

nizing such participation had been served upon Hurley. Both of these actions took place prior to the time that Hurley filed its motion. The failure to make such service upon New York necessarily deprived it of an opportunity to respond thereto. This opportunity is a fundamental aspect of the granting of due process to all parties in an administrative proceeding.

We have determined that the granting of the Hurley motion by our letter order of June 29, 1960, was improper, in view of the fact that New York had had no opportunity to present its views. The only course of action which properly can be taken now by us is to allow New York an opportunity to demonstrate with appropriate evidence why the motion should not be granted, at the same time allowing Hurley to demonstrate why it should be granted. Since the matter is now pending before a hearing examiner, we feel that, in the first instance, the decision should be made by such examiner. Accordingly we have directed that it should be ruled upon by the presiding examiner as a part of his initial decision.

The Commission finds:

No basis has been demonstrated by Hurley Oil and Gas Company which justifies reconsiderations and modification of our order of January 14, 1963.

The Commission orders:

The application for Reconsideration and Modification of our January 14, 1963 order in the above named proceeding filed by Hurley Oil and Gas Company on February 8, 1963, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP63-130

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 4, 1963)

On November 13, 1962, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP63-130 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1963 and the operation of unspecified natural gas facilities for the delivery of natural gas to existing customers, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in constructing and placing in operation certain natural gas delivery facilities without the delay incident to the filing and processing of individual certificate applications.

The total cost of the proposed facilities will not exceed a maximum of $168,000, and no single project will exceed a cost of $20,000. The application states that the proposed facilities will be financed from funds on hand.

No increase over presently authorized volumes is requested in the instant application. Applicant proposes to establish additional delivery points to enable existing customers to provide gas service in areas heretofore without such service. The proposed service will be subject to the following conditions:

(a) Applicant's customer proposing service in the new area will not require an increase in the contract volume presently available from Applicant;

(b) The service will be in an area not heretofore served with natural gas;

(c) Applicant's customer proposing the service has obtained such authorization therefor as may be required;

(d) The estimated peak day delivery requirements in the first and third years of operations for the new area or areas are less than 2% and 5%, respectively, of the total peak day volumes of natural gas, including storage service, available from Applicant to the customer proposing such service or 5,000 Mcf, whichever is less; and

(e) Applicant's customer proposing the service does not propose, under the authorization herein sought, to serve an industrial customer in the new area that would use in excess of 10,000 Mcf of gas per month.

Applicant has not requested any change in the design or operation of its pipeline system or in the rates now charged by it by reason of the construction of the proposed facilities.

Pursuant to due notice, a public hearing was held in Washington, D.C., on February 21, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G-235 (3 FPC 830).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and delivery of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and delivery of natural gas by Applicant are subject to the requirement of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities and the transportation and delivery of natural gas to serve existing customers as proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization hereinafter granted, a statement showing by projects: (a) location of facilities, (b) description of facilities, (c) actual installed cost of facilities, (d) resale customer served, (e) new area served, and (f) estimated annual and peak day requirements of the new area in the third year of operation.

(7) Public convenience and necessity require that the certificate issued hereinafter should be subject to the following conditions:

(a) Applicant's customer proposing service in the new area will not require an increase in the contract volume presently available from Applicant;

(b) The service will be in an area not heretofore served with natural gas;

(c) Applicant's customer proposing the service has obtained such authorization therefor as may be required;

(d) The estimated peak day delivery requirements in the first and third years of operations for the new area or areas are less than 2% and 5%, respectively, of the total peak day volumes of natural gas, including storage service, available from Applicant to the customer proposing such service or 5,000 Mcf, whichever is less; and

(e) Applicant's customer proposing the service does not propose, under the authorization herein sought, to serve an industrial customer in the new area that would use in excess of 10,000 Mcf of gas per month.

(8) The authorization hereinafter granted should be limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $168,000, with no single project to exceed a cost of $20,000.

(9) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Natural Gas Pipeline Company of America, to construct during the calendar year 1963 facilities for the transportation and delivery of natural gas and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) location of facilities, (b) description of facilities, (c) actual installed cost of facilities, (d) resale customer served, (e) new area served, and (f) estimated annual and peak day requirements of the new area in the third year of operation.

(D) The certificate issued by paragraph (A) above is subject to the following conditions:

(a) Applicant's customer proposing service in the new area will not require an increase in the contract volume presently available from Applicant;

(b) The service will be in an area not heretofore served with natural gas;

(c) Applicant's customer proposing the service has obtained such authorization therefor as may be required;

(d) The estimated peak day delivery requirements in the first and third years of operations for the new area or areas are less than 2% and 5%, respectively, of the total peak day volumes of natural gas, including storage service, available from Applicant to the customer proposing such service or 5,000 Mcf, whichever is less; and

(e) Applicant's customer proposing the service does not propose, under the authorization herein sought, to serve an industrial customer in the new area that would use in excess of 10,000 Mcf of gas per month.

(E) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $168,000, with no single project to exceed a cost of $20,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TENNESSEE GAS TRANSMISSION COMPANY AND SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-146

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 4, 1963)

On November 28, 1962, Tennessee Gas Transmission Company (Tennessee) and Southern Natural Gas Company (Southern) filed in Docket No. CP63-146 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of two emergency interconnections between the pipeline systems of the two companies and the exchange of natural gas, all as more fully set forth in the application.

Applicants propose to locate the emergency interconnections at the point where Southern's 24-inch Second North Main Line crosses Tennessee's 30-inch Delta-Portland Line in Lowndes County, Mississippi, and at the point where Southern's 18-inch line crosses Tennessee's 30-inch Delta-Portland Line in Clarke County. Mississippi.

The total cost of the proposed facilities is estimated to be $35,406. Of this amount, $12,916 will be shared equally between the Applicants for tie-over lines and metering facilities, and the balance will be expended by the individual Applicants for taps and side valves. The facilities will be financed from funds on hand or from revolving credit.

The proposed facilities will be utilized when either company is confronted with an emergency which can be alleviated by the deliveries of natural gas from the other when such deliveries can be made without impairment of service obligations to others. All deliveries will be made on a gas-for-gas exchange basis.

Pursuant to due notice, a public hearing was held in Washington, D.C., on February 19, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of July 15, 1947, in Docket No. G-910 (6 FPC 777).

(2) Applicant, Southern Natural Gas Company, a Delaware corporation hav-

ing its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G–296 (3 FPC 822).

(3) The facilities hereinafter described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and delivery of natural gas by Applicants is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities and the transportation and delivery of natural gas by Applicants are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of the such Regulations.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicants, Tennessee Gas Transmission Company and Southern Natural Gas Company, to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP63–66

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSSITY

(Issued March 5, 1963)

On September 17, 1962, Cities Service Gas Company (Applicant) filed in Docket No. CP63–66 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing construction and operation during the calendar year of 1963 of certain miscellaneous natural gas transmission facilities, all as more fully set forth in application.

Applicant seeks authority herein to construct during 1963 and operate certain miscellaneous natural gas transmission facilities. It may become necessary or desirable for Applicant to move, relocate, alter or reconstruct existing natural gas pipeline facilities, or to construct substitute facilities for existing ones, in order to accommodate the desires or activities of others, including Federal, State, and local authorities, landowners and direct industrial and resale customers.

The construction and operation of the proposed facilities will be initiated upon the requests from others as above mentioned where Applicant's existing facilities interfere with highways or other Federal, State or local improvement projects, or with proposed utilization or sale of land by the owners or where changes in Applicant's facilities are required or necessitated in connection with changes in plant facilities of direct industrial or utility customers of Applicant. In some cases the use of facilities would be discontinued following changes made. In most instances the cost of reclaiming or altering facilities will be borne entirely or partly by the party desiring and requesting the change. Ordinarily no increase or decrease in design or capacity of the particular facility being altered or replaced will be involved, nor will there be any essential change in the character of Applicant's service to any of its customers.

Not more than ten projects of the kind above described will be constructed during the year. No single project will exceed a cost of $50,000 and the total cost of all projects will not exceed $500,000. These costs may be offset in whole or in part by reimbursement from others.

Pursuant to due notice, a public hearing was held in Washington, D.C., on February 20, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Cities Service Gas Company, is a natural gas company within the meaning of the Natural Gas Act, as is stated in the application on file herein and as heretofore found by the Commission in its order of December 28, 1943, in Docket No. 298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation hereof by Applicant are subject to the requirements of Subsection (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and installation of the facilities proposed during the calendar year 1963 and their operation for continued delivery of natural gas by the Applicant are required by public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(5) The authorization granted herein should be limited to construction during the calendar year 1963 and the total expenditures for all facilities so authorized should be limited to a maximum of $500,000 with no single project to exceed a cost of $50,000.

(6) Public convenience and necessity require that the certificate issued and the rights granted thereunder be conditioned upon Applicant's compliance with

all applicable regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit on or before April 1, 1964 a statement containing a description, cost, name and location of each project; the name of each customer to be served thereby, the expected date of termination of temporary customers, if any, and the amount of the annual revenues together with the estimated annual volumes of deliveries of gas to each customer.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Cities Service Gas Company to construct and operate natural gas facilities and to sell natural gas as hereinbefore described, and as more fully described in the application in this proceeding upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1963, and the total expenditures for facilities authorized to be constructed are hereby limited to a maximum of $500,000, with no single project to exceed a cost of $50,000.

(D) Applicant shall submit on or before April 1, 1964, a statement showing (a) complete information as to actual construction, (b) cost of each installation, (c) name and location of each customer, (d) actual facilities installed for each customer, (e) expected date of termination of service to temporary customers, (f) expected annual revenues, and (g) expected annual deliveries to each customer.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

J. M. HUBER CORPORATION, DOCKET NO. G–8111; J. M. HUBER CORPORATION v. NORTHERN NATURAL GAS COMPANY, DOCKET NO. G–8112

FINDINGS AND ORDER DISMISSING COMPLAINT AND DISMISSING PETITION FOR DECLARATORY ORDER

(Issued March 5, 1963)

On April 21, 1936, J. M. Huber Corporation (Huber), an independent producer, and Northern Natural Gas Company (Northern), a pipeline, entered into a contract for the sale of natural gas by Huber to Northern. Under the terms of the contract, Huber was allowed to add to the sale price of the gas any Texas production tax; and further, Huber was given the right to cancel the contract if a government regulatory body established a sale price less than that provided by the contract. The Texas production tax was increased on September 1, 1954, and Huber claimed that the Commission's Order No. 174–A prevented it

from receiving the amount of the increase from Northern and the latter from paying it. Accordingly, on September 1, 1954, Huber gave Northern notice that it intended to cancel the contract in 180 days on March 1, 1955.

On September 24, 1954, Huber filed with the Commission an application for a certificate of public convenience and necessity authorizing the sale to Northern while at the same time specifically reserving the right to challenge the legality and applicability of the Commission's Order No. 174–A, 13 FPC 1255. The application was assigned Docket No. G–3038. On the same day Huber also filed with the Commission a notice of cancellation of the rate schedule for the sale to Northern and specifically reserved the right to challenge the applicability of Section 7(b) of the Natural Gas Act to the sale. This notice was assigned Docket No. G–4957. Northern filed a petition to intervene in Docket No. G–3038 and a complaint against Huber for the cancellation of the contract and threatened termination of deliveries. The petition to intervene was granted and the complaint was designated as Docket No. G–4326. On December 30, 1954, the Commission rejected the notice of cancellation. Thereupon, on January 14, 1955, Huber filed a notice of withdrawal of the application for a certificate and stated that it was not willing to conform to the provisions of Section 7(e) of the Natural Gas Act and that therefore the certificate should not be issued.

On January 25, 1955, Huber filed a petition for a declaratory order to terminate the controversy and remove uncertainty with reference to the aforementioned proceedings. Concurrently therewith Huber filed a complaint against Northern for failure to obtain a certificate for the facilities used for the purpose of transporting the gas purchased from Huber. The petition was assigned Docket No. G–8111 and the complaint was assigned Docket No. G–8112.

On January 26, 1955, Docket Nos. G–3038, G–4326, and G–4957 came on for hearing. On January 27, 1955, Huber filed a notice of withdrawal of the notice of cancellation of the rate schedule filed on September 24, 1954, in Docket No. G–4957. The hearing was concluded on January 28, 1955.

After being notified of Huber's intention to discontinue the sale on March 10, 1955, without Commission approval and prior to a determination of the matters then before the Commission, the Commission sought and there was issued a temporary restraining order and then an injunction prohibiting Huber from discontinuing the sale.[1]

The Presiding Examiner filed his decision in the consolidated proceeding and issued a certificate to Huber and denied the application for abandonment of service, 14 FPC 340. On October 6, 1955, 14 FPC 353, the Commission affirmed the decision in its entirety and rehearing was denied by an order of the Commission issued November 29, 1955. The order issuing the certificate and denying the abandonment was judicially reviewed and was affirmed on August 31, 1956.[2]

The petition and complaint in Docket Nos. G–8111 and G–8112, respectively, have never been formally considered by the Commission although the issues raised therein have been finally determined in the consolidated proceeding in Docket No. G–3038, *et al.*

The Commission finds:

The issues raised in the petition and complaint in Docket Nos. G–8111 and G–8112, respectively, have been fully considered and finally determined in the proceedings in Docket No. G–3038, *et al.*

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[1] *Federal Power Commission* v. *J. M. Huber Corporation*, 133 F. Supp. 479 (D.C.D.N.J., 1955).

[2] *J. M. Huber Corporation* v. *Federal Power Commission*, 236 F. 2d 550 (3rd Cir., 1956), *cert.* den. 352 U.S. 971 (1957).

The Commission orders:

The petition and complaint in Docket Nos. G–8111 and G–8112, respectively, be and the same are hereby dismissed as moot.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NORTH STAR NATURAL GAS COMPANY OF WISCONSIN, INC., DOCKET NO. CP63–44; NORTH STAR NATURAL GAS COMPANY, DOCKET NO. CP63–45; MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. G–18313

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALES OF NATURAL GAS AND ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 5, 1963)

On August 16, 1962, North Star Natural Gas Company, of Wisconsin, Inc. (North Star Wisconsin), filed in Docket No. CP63–44 an application pursuant to section 7(a) of the Natural Gas Act for an order of the Commission directing Midwestern Gas Transmission Company (Midwestern) to establish physical connection of its transmission facilities with the proposed facilities of and to sell natural gas to North Star Wisconsin for resale and distribution in the Village of Dresser, Wisconsin, and environs, all as more fully set forth in the application in Docket No. CP63–44.

North Star Wisconsin proposes to construct and operate a lateral transmission line connecting Midwestern's main transmission line with the distribution system North Star Wisconsin proposes to construct and operate in Dresser. The total estimated cost of the proposed facilities is shown to be $68,600, which cost will be financed by short term financing and by cash generated from operation.

On August 16, 1962, North Star Natural Gas Company (North Star) filed in Docket No. CP63–45 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Midwestern to establish physical connection of its transmission facilities with the proposed facilities of and to sell natural gas to North Star for resale and distribution in the Village of Bertha, Minnesota, and environs, all as more fully set forth in the application in Docket No. CP63–45.

North Star proposes to construct and operate a lateral transmission line connecting Midwestern's main transmission line with the distribution system North Star proposes to construct and operate in Bertha. The total estimated cost of the proposed facilities is shown to be $153,800, which cost will be financed by short term financing and by cash generated from operation.

The estimated third year peak day and annual natural gas requirements for Dresser and Bertha are:

	Peak day (Mcf)	Annual (Mcf)
Dresser	142	102, 722
Bertha	296	155, 908

Applicants have received franchises from the communities wherein natural gas service is proposed.

On September 20, 1962, Midwestern filed an answer to the subject applications stating that it does not oppose them and is willing to render the proposed services. In order to provide service to North Star Wisconsin and North Star, Midwestern states that it is necessary to amend the Commission's order accompanying Opinion No. 331, issued October 31, 1959, 22 FPC 775, as amended, in Docket No. G–18313 in order to revise certain of its contract demand allocations.

Accordingly, on September 20, 1962, as supplemented on October 18, 1962, Midwestern filed in Docket No. G–18313 a motion to amend the order accompanying Opinion No. 331, issued October 31, 1959, as amended, by reducing the contract demand of the Village of Hawley, Minnesota, by 162 Mcf and the contract demand of Montana-Dakota Utilities Company by 1,500 Mcf. Midwestern states that said customers have requested the foregoing reductions.

It appears, therefore, that the subject order accompanying Opinion No. 331 should be further amended by reallocating the volumes of natural gas that Midwestern is obligated to deliver to its customers as proposed in the "Analysis of Third Year Contract Demand Allocation" schedule attached to Midwestern's motion to amend as Exhibit A. As a result of such a reallocation Midwestern will have 1,699 Mcf of unallocated gas supply which will be adequate to meet the combined third year maximum day requirements for Bertha and Dresser.

Due notice of the filing of the applications and the motion to amend and opportunity for hearing thereon has been given by publication in the Federal Register on January 23, 1963 (28 FR 606). No protest or petition to intervene has been filed in these proceedings.

The Commission finds:

(1) Midwestern Gas Transmission Company, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued May 12, 1959, in Docket No. G–16841 (21 FPC 653).

(2) Applicant, North Star Natural Gas Company of Wisconsin, Inc., is a public utility duly organized and existing under the laws of the State of Wisconsin and authorized to engage in the business of distributing and selling natural gas within said State.

(3) Applicant, North Star Natural Gas Company, is a public utility duly organized and existing under the laws of the State of Minnesota and authorized to engage in the business of distributing and selling natural gas within said State.

(4) It is necessary and desirable in the public interest that Midwestern be directed to establish physical connection of its natural gas transmission system with the proposed facilities of North Star Wisconsin and North Star and to sell and deliver up to 142 Mcf of natural gas per day to North Star Wisconsin and to sell and deliver up to 296 Mcf of natural gas per day to North Star, as set forth in the applications in Docket Nos. CP63–44 and CP63–45, and as hereinafter ordered and conditioned.

(5) North Star Wisconsin and North Star should be prepared to receive natural gas from Midwestern within one year from the date of issuance of this order.

(6) The requirement that Midwestern serve North Star Wisconsin and North Star, as proposed, will not place any undue burden upon Midwestern nor impair its ability to render adequate service to its existing customers.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Com-

mission's order accompanying Opinion No. 331, issued October 31, 1959, in Docket No. G–18313 be further amended as hereinafter ordered.

The Commission orders:

(A) Midwestern Gas Transmission Company be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of North Star Wisconsin and North Star and to sell and deliver up to 142 Mcf of natural gas per day to North Star Wisconsin and to sell and deliver up to 296 Mcf of natural gas per day to North Star, all as hereinbefore described and as more fully set forth in the applications in Docket Nos. CP63–44 and CP63–45.

(B) North Star Wisconsin and North Star shall be prepared to receive natural gas from Midwestern within one year from the date of issuance of this order.

(C) Midwestern shall report to the Commission in writing the date of commencement of service to North Star Wisconsin and North Star within ten days thereof.

(D) The motion of Midwestern to amend further the Commission's order accompanying Opinion No. 331, issued October 31, 1959, in Docket No. G–18313, be and the same is granted and the present allocation of natural gas set forth therein is hereby revised in accordance with Exhibit A attached to Midwestern's motion. Accordingly, Midwestern is hereby authorized to sell natural gas to the following customers in the amounts stated:

	Contract demand (Mcf)
Argyle, Minnesota (Village of)	366
Frazee, Minnesota (Village of)	565
Hallock, Minnesota (Village of)	769
Hawley, Minnesota (Village of)	450
Lake Park, Minnesota (Village of)	355
Michigan Wisconsin Pipe Line Company	158,000
Montana-Dakota Utilities Company	2,500
New York Mills, Minnesota (Village of)	537
North Central Public Service Company	350
Northern States Power Company:	
Chippewa Falls	2,390
Dilworth	330
East Grand Forks	1,160
Eau Claire	7,200
Fargo	8,900
Grand Forks	5,310
Menomonie	1,680
Moorhead	2,560
Total Northern States Power Company	29,530
Perham, Minnesota (Village of)	600
Stephen, Minnesota (Village of)	405
United Petroleum Gas Company:	
Ada	600
Detroit Lakes	900
Total United Petroleum Gas Company	1,500

	Contract demand (Mcf)
Warren, Minnesota (City of)	818
American Gas Company of Wisconsin, Inc	3,500
Total contract demand	200,245
Fuel	2,056
Unallocated	1,699
Total supply	204,000

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP63-65

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 6, 1963)

On September 17, 1962, as supplemented on September 19, 1962, Cities Service Gas Company (Applicant) filed in Docket No. CP63-65 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1963, and the operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing area generally co-extensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $3,000,000 and no single project will exceed a cost of $500,000. The proposed facilities will be financed from treasury cash.

Pursuant to due notice, a public hearing was held in Washington, D.C., on February 20, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation, having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G-298 (4 FPC 471).

(2) The facilities hereinbefore described as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities to take natural gas purchased from producers thereof as proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (A) and (E) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization hereinafter granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization hereinafter granted, (d) location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Cities Service Gas Company to construct during the calendar year 1963 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Cities Service Gas Company.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the inde-

pendent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. CI63-867

ORDER DENYING APPLICATION FOR REHEARING

(Issued March 6, 1963)

On March 4, 1963, Pan American Petroleum Corporation (Pan American) filed an application for rehearing of the Commission's letter order of February 19, 1963, 29 FPC 378, which rejected Pan American's January 16, 1963, application for a certificate of public convenience and necessity and the related filing of its October 4, 1962, gas purchase contract with Colorado Interstate Gas Company as the proposed rate schedule because the contract contains pricing provisions other than those permitted by Section 154.93, as amended, of the Commission's Regulations under the Natural Gas Act (Act). No request for waiver has been filed pursuant to Section 1.7 of the Rules of Practice and Procedure.[1]

For each five-year period after October 1, 1983, the contract calls for "the establishment of the fair market price for the sale of gas hereunder * * *" by considering, among other things, prices in agreements "which at that time have been recently negotiated or renegotiated." It seems evident therefore, that Paragraph 5.1 of the contract would permit a price redetermination based upon producer rates which are then in issue in suspension or certificate proceedings—a procedure clearly prohibited by Section 154.93. Pan American does not contend that Paragraph 5.1 comes within Section 154.93 and apparently did not draft it in order to meet the requirements of the Section. In essence Pan American attacks Section 154.93 as amended by Commission orders Nos. 232, 232A and 242 (Issued March 3, 25 FPC 379, and 31, 1961, 25 FPC 609, and February 8, 1962, 27 FPC 339, respectively), as invalid because it is without reasonable basis in law and fact and goes beyond the powers granted to the Commission by the Act. However, Pan American presents no arguments that were not fully considered by the Commission when it issued the above mentioned orders.

The Commission finds:

The assignments of error and grounds for rehearing set forth in Pan American's application present no new facts or principles of law which were not considered by the Commission when it issued its letter order of February 19, 1963, or which having now been considered, warrant any change or modification of the order.

The Commission orders:

The application for rehearing filed by Pan American Petroleum Corporation on March 4, 1963, is hereby denied.

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[1] Section 1.7 was amended and clarified by our Order No. 255 issued September 20, 1962, 28 FPC 500, 27 F.R. 9499.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TOWN OF JAMESTOWN, TENNESSEE, DOCKET NO. CP63-141

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued March 7, 1963)

On November 23, 1962, as supplemented on January 3, 1963, the Town of Jamestown, Tennessee (Applicant), filed in Docket No. CP63-141 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing East Tennessee Natural Gas Company (Respondent) to establish physical connection of its facilities with those which Applicant proposes to construct and operate and to sell and deliver natural gas to Applicant for resale and distribution in the Town of Jamestown and environs, all as more fully set forth in the application as supplemented.

Applicant proposes to construct and operate approximately 18.2 miles of 4-inch transmission line from the city gate to an interconnection with the main line of Respondent. Applicant will construct and operate a distribution system to serve consumers in Greater Jamestown and will also make sales directly from the lateral line in outlying areas.

Applicant estimates its natural gas requirements in Mcf for the first three years of operation to be as follows:

Year	Peak day	Annual
1	966	109,514
2	1,086	123,794
3	1,146	132,574

Applicant's facilities are estimated to cost $485,000, which will be financed by the issuance of $250,000 Natural Gas Revenue and Tax Deficiency Bonds and by a grant of $235,000 from the Housing and Home Finance Agency under the Public Works Acceleration Act.[1]

On December 17, 1962, Respondent filed an answer to the application and stated that it has the necessary pipeline capacity and is willing and able to render the requested service.

Notice of the application was issued on January 28, 1963, and published in the Federal Register on February 2, 1963 (28 FR 1084). No protest, request for hearing, or petition to intervene has been received.

The Commission finds:

(1) Applicant, Town of Jamestown, Tennessee, is a municipal corporation organized and existing under the laws of the State of Tennessee, and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in the Town of Jamestown, Tennessee, and environs.

(2) Respondent, East Tennessee Natural Gas Company, a Tennessee corporation having its principal place of business in Knoxville, Tennessee, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of February 2, 1948, in Docket No. G-889 (7 FPC 5).

(3) It is necessary and desirable in the public interest to direct East Tennessee Natural Gas Company to establish physical connection of its transmission

[1] 76 Stat. 541 (1962).

facilities with the facilities proposed to be constructed and operated by Applicant as hereinbefore described, all as more fully described in the application in this proceeding, and to sell and deliver to Applicant up to 1,146 Mcf of gas per day for resale and distribution in the Town of Jamestown and environs as hereinafter ordered.

(4) Applicant should commence taking gas from Respondent within one year from the date on which this order issues.

(5) The order hereinafter issued should be conditions upon Applicant's receiving a grant of $235,000 from the Housing and Home Finance Agency under the Public Works Acceleration Act for the construction of the proposed gas distribution system.

The Commission orders:

(A) East Tennessee Natural Gas Company be and it is hereby directed to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant as hereinbefore described, all a smore fully described in the application in this proceeding, together with such metering, regulating, and appurtenant facilities as may be required therefor, and to sell and deliver up to 1,146 Mcf of natural gas per day to Applicant pursuant to Respondent's appropriate rate schedules on file with the Commission.

(B) Applicant shall commence the purchase of gas as proposed herein within one year from the date on which this order issues.

(C) The order issued by paragraph (A) above is conditioned upon Applicant's receiving a grant of $235,000 from the Housing and Home Finance Agency under the Public Works Acceleration Act for the construction of the proposed gas distribution system.

(D) Respondent shall report to the Commission the date of commencement of service within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr. and Charles R. Ross.

SOUTHERN NATURAL GAS COMPANY, DOCKET NOS. G-20509 AND RP60-15

ORDER DENYING APPLICATION FOR REHEARING, GRANTING MOTION FOR STAY AND FOR LEAVE TO FILE SUBSTITUTE RATES

(Issued March 7, 1963)

On February 21, 1963, Southern Natural Gas Company (Southern), filed an application for rehearing of Opinion No. 379 and accompanying order, issued by the Commission on February 18, 1963, 29 FPC 323. Southern also moved for a stay of said order to the extent hereinafter specified and for leave to file substitute rates to be effective for the duration of the stay. The opinion and order, among other things, disallowed proposed increased rates which had become effective subject to refund on June 1, 1960, and on August 13, 1960, respectively, and directed that refunds be made and reduced rates be filed by Southern within 45 days thereafter.

Southern seeks rehearing only with respect to the Commission's inclusion in its rate of return computations of an allowance of 1.5 percent on accumulated deferred taxes. As noted in the opinion, the Commission in its orders issued July 8 and July 29, 1960, determining interim rate of return for Southern, reserved judgment on the disposition of this item until this phase of the proceeding.

In support of its application for rehearing, Southern again urges that the Commission's treatment of accumulated deferred taxes is erroneous because it disregarded a claimed Congressional intent of the pertinent provisions of the Internal Revenue Code to benefit the taxpayer, not the consumer; because the Commission's treatment is claimed to be contrary to the court's holdings in the two *Panhandle* cases[1]; because the Commission's treatment is claimed to depart from its prior determinations that natural gas companies are entitled to retain the benefit of such tax accumulations; and because it does not accord Southern the opportunity to earn a full 6.5 percent rate of return on its accumulated deferred tax accruals.[2] We have previously considered and rejected these and similar contentions made by Southern in these proceedings as well as in other proceedings in which we have made a similar return allowance on accumulated deferred taxes.[3] Therefore, we find no basis for granting rehearing.

Southern seeks a stay of our order, insofar as it reflects our treatment of accumulated deferred taxes as an element in our rate of return computations. In support thereof, it states that it intends to seek court review on this issue, and, assuming that it may prevail on the merits and obtain a reversal of our order, Southern asserts that it would be irreparably injured by having been required to make refunds which would then be difficult and expensive, if not impossible, to recover. Moreover, Southern asserts that its customers meanwhile will be adequately safeguarded by our refund requirements. In further support of its application for stay, Southern cites the pending litigation on this issue in the *Panhandle* case, *supra*.

Southern's application states that pending such stay, if granted, it will promptly make the rate reductions and refunds directed by our opinion and order excepting only that portion relating to the one issue as to which it intends to seek court review. For this purpose, Southern has appended to its application schedules which reflect a cost study which we have reviewed, and which include allocations and rates designed in accordance with the principles utilized in our opinion. These schedules reflect an increase in jurisdictional cost of service in the amount of $1,050,217 from the $96,854, 621 allowed by our opinion (Appendix B) to $97,904,838. As a result of the proposed increase in rate levels in the substitute rates Southern's schedules show that revenues, on the basis of test year sales, would be increased by $1,036,241 from $96,869,251 to $97,905,492.

Although some of the claims made by Southern in support of its request for stay are, in our opinion, not persuasive, we think that there are at least two considerations which warrant a stay. One is that the stay is sought only with respect to minor fractions of the refunds and rate reduction ordered. Hence, the stay requested will not deprive consumers of immediate benefits from the major portion of our order. Another consideration is that there is not in the present case any probability that the company will, upon some other branch of the case, subsequently be ordered to make other refunds and reduction in

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[1] *City of Detroit, Michigan* v. *FPC*, 230 F. 2d 810 (1955), *certiorari* denied 352 U.S. 829 (1956), and *Panhandle Eastern Pipe Line Co.* v. *FPC*, Case No. 16479; on rehearing, FPC ruling affirmed, 316 F. 2d 659 (1963).

[2] Alternatively, Southern claims that it should be allowed at least 5.015 percent on accumulated deferred taxes, which percentage, they say, represents the rate of return which would be allowed on deferred tax accumulations if the Commission had utilized Southern's historical debt-equity ratio instead of an industry-wide average ratio.

[3] *Northern Natural Gas Co.*, Opinion No. 342. 25 FPC 431 (1961), *Kansas-Nebraska Natural Gas Co.*, Opinion No. 334, 25 FPC 448 (1961), *Alabama-Tennessee Natural Gas Co.*, Opinion No. 360, 27 FPC 1180 (1962), *El Paso Natural Gas Co.*, Opinion No. 366, 28 FPC 688 (1962), *Panhandle Eastern Pipe Line Co.*, order issued March 20, 1961, in Docket No. G–19780, 25 FPC 550.

its rates. Hence, if our order is not stayed, and on court review is set aside, there is no assurance that the company can set off its right of recovery against any such refunds and reduction. However, if the pending *Panhandle* case, *supra*, results in a final decision upholding the Commission, we feel it should then be incumbent upon the company to present its claim for continuance of the stay to the court.

Under the circumstances, it appears appropriate to grant a stay in this matter, but only until 30 days after issuance of the court's mandate in the pending *Panhandle* case, *supra*, on this issue.

The Commission finds:

(1) The assignments of error and grounds for rehearing set forth in the applications for rehearing filed herein present no new facts or principles of law which were not considered by the Commission when it issued Opinion No. 379, or which having now been considered warrant any change or modification of said opinion except as specified below.

(2) Good cause has been shown for granting Southern's motion for a stay, as described below, of the effectiveness of that portion of the provisions of the order accompanying Opinion No. 379, which relate to the treatment of accumulated deferred taxes in the computation of rate of return, and for granting Southern's motion to permit it to file substitute rates, set forth in Appendix B of the application, in lieu of those set forth in Appendix C of Opinion No. 379; to make appropriate refunds and to otherwise comply with the provisions of Opinion No. 379 and accompany order.

The Commission orders:

(A) Southern's application for rehearing of Opinion No. 379 as described above is hereby denied.

(B) Southern's motion for a stay of the effectiveness of Opinion No. 379 and order, only insofar as the order is based upon the inclusion of accumulated deferred taxes at 1.5 percent in the computation of rate of return, is hereby granted until 30 days after issuance of the court's mandate in the pending *Panhandle* case, *supra*, on this issue.

(C) Southern is hereby directed to file substitute rates in accordance with Appendix "B" of its application, which shall be made effective in lieu of the rates prescribed by Opinion No. 379, pursuant to the provisions of the opinion and order, except as to the rate of return issue above described; *provided, however*, that such substitute rates shall remain subject to the refund obligations of our order issued herein on July 29, 1960, insofar as they include an allowance for return reflecting the exclusion of accumulated deferred taxes in the rate of return computations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP63-145

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued March 7, 1963)

On November 27, 1962, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP63-145 an application pursuant to Section 7(b) of the Natural Gas Act for authority to abandon its Terre Haute Compressor Station (300 horsepower) and appurtenances located on its Terre Haute-Martinsville 6-inch pipeline located near Terre Haute, Indiana.

Applicant states that this Terre Haute Compressor facility has not been in operation since its Hymera-Bedford line was constructed and placed in service. The new facility provides a source of high pressure gas, which eliminates the need for the compressor facilities sought to be abandoned.

The station facilities are to be retired from service and sold for salvage, except the steel building which houses the compressor; it will be relocated and used at Applicant's Leesville Storage Field in Indiana.

Pursuant to due notice, a public hearing was held in Washington, D.C., on February 21, 1963 respecting the matters involved in and the issues presented by the application. No petition to intervene or protest to the granting of the application has been received. Staff Counsel moved orally at the hearing that the intermediate decision procedure be omitted and the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a "natural-gas" company within the meaning of the Natural Gas Act, as stated in the application.

(2) There is no present need for the compressor station above described and no abandonment of service will result from its removal. Therefore, the public convenience and necessity does not require the continued maintenance and operation thereof.

(3) A request made during the public hearing by Staff Counsel for the omission of the intermediate decision procedure under Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure was unopposed by any party of record, and not having been denied by the Commission is granted pursuant to Section 1.30(c)(1) of the rules.

The Commission orders:

(A) Applicant be and is hereby permitted to abandon the facilities heretofore described, as more fully described in the application.

(B) Applicant shall advise the Commission of the date of abandonment from service of the compressor station within ten days thereafter.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NOS. G–13910 AND G–16791

ORDER GRANTING PETITION TO AMEND ORDER

(Issued March 8, 1963)

On January 28, 1963, Arkansas Louisiana Gas Company (Ark La), filed a petition in the above-entitled proceedings requesting the Commission to amend its order issued in these proceedings on December 12, 1962, 28 FPC 1005, so as to permit the increased rate to become effective as of July 30, 1962, rather than December 12, 1962, the date set forth in the subject order.

By orders issued December 13, 1957, and October 30, 1958, in Docket Nos. G–13910 and G–16791, respectively, the Commission suspended Ark La's proposed increases in rate for the sale of natural gas to Southwest Gas Producing Company, Inc. (Southwest), for the statutory five months period and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act. Ark La never moved to place the proposed increases in rate in effect

prior to its motion filed herein on July 30, 1962. By its motion of July 30, 1962, Ark La requested that the increased rate of 12.6855¢ per Mcf be made effective and that the subject proceedings be terminated. By order issued December 12, 1962, the subject proceedings were terminated and the increased rate was made effective as of December 12, 1962.

Upon consideration of the aforementioned petition and under the court ruling of *Associated Oil and Gas Company* v. *F.P.C.*, 280 F. 2d 31, that the proposed increased rate becomes effective upon the filing of a proper motion at the end of the suspension date, Ark La's motion filed on July 30, 1962, met the statutory provisions of placing the increased rate in effect as of that date. It is appropriate, therefore, that the order issued on December 12, 1962 be amended as hereinafter provided.

The Commission orders:

(A) Ordering paragraph (B) of the order issued December 12, 1962, in these proceedings is hereby changed to read as follows:

(B) Pursuant to Ark La's motion, the rate of 12.6855¢ per Mcf consisting of 11.3522¢ base price plus 1.3333¢ tax reimbursement is effective as of July 30, 1962, for the subject sale of natural gas.

(B) In all other respects, the order issued December 12, 1962, in these proceedings shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP62-28; SHELL OIL COMPANY, DOCKET NO. CI62-53

FINDINGS AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 8, 1963)

On August 2, 1961, as supplemented on December 13, 1961, El Paso Natural Gas Company (El Paso) filed in Docket No. CP62-28 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of an existing 2.4 miles of 4½-inch field line necessary to purchase gas from Shell Oil Company (Shell) for resale in interstate commerce, all as more fully set forth in the application, as supplemented.

El Paso states that since May 28, 1958, it has been purchasing gas, produced in the Los Medanos Field, Eddy County, New Mexico, from Shell under short term contracts and transporting the gas through the subject field line and its existing Eunice-Carlsbad transmission line for resale in intrastate commerce. El Paso now proposes to transport this gas through the above-mentioned existing field line and its existing Eunice-Carlsbad transmission line for resale in interstate commerce.

The cost of constructing the subject line was $27,667. No additional markets are proposed to be served.

On July 18, 1961, as supplemented on September 4, 1962, Shell filed in Docket No. CI62-53 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to El Paso from the Los Medanos Field, all as more fully set forth in the application, as supplemented.

El Paso and Shell have entered into a gas sale contract, dated May 25, 1961, as amended on August 15, 1962 which provides for a total sales price, including tax reimbursement, of 15.55987¢ per Mcf (14.65 psai) and which further provides for a daily-contract-quantity of 1,000 Mcf of natural gas for each 8,000 Mcf of original recoverable reserves commencing with the first deliveries under the subject contract.

Pursuant to due notice, a public hearing was held in Washington, D.C., on February 26, 1963, respecting the matters involved in and the issues presented by the applications, as supplemented, in Docket Nos. CP62–28 and CI62–53. No petition to intervene or protest to the granting of the applications has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) Applicant, Shell Oil Company, an independent producer of natural gas, is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption subject to the jurisdiction of the Commission and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(3) The facilities to be operated by El Paso, as hereinbefore described and as more fully described in the application, as supplemented, in Docket No. CP62–28, are proposed to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and operation thereof by El Paso is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The sale of natural gas by Shell hereinbefore described, as more fully described in the application, as supplemented, in Docket No. CI62–53, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sale by Shell, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The sale of natural gas by Shell, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) The operation of the facilities proposed by El Paso is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(7) Shell and El Paso are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(8) Public convenience and necessity require that the certificate issued hereinafter to El Paso and the rights granted thereunder be conditioned upon El Paso's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(9) The gas contract, dated May 25, 1961, between Shell and El Paso, and the amendment thereto, dated August 15, 1962, should be accepted for filing as Shell Oil Company FPC Gas Rate Schedule No. 253 and Supplement No. 1 thereto, respectively, to become effective on the date of initial delivery.

(10) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to operate the facilities as hereinbefore described, all as more fully described in the application, as supplemented, in Docket No. CP62–28, upon the terms and conditions of this order.

(B) A certificate of public convenience and necessity be and the same is hereby issued upon the terms and conditions of this order, authorizing the sale by Shell Oil Company of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary for the sale of natural gas in interstate commerce, to El Paso, as hereinbefore described and as more fully described in the application, as supplemented, in Docket No. CI62–53.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon El Paso's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(D) The certificate issued to Shell in paragraph (B) above is not transferable and shall be effective only so long as Shell continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(E) The grant of the certificate issued in paragraph (B) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by, or against, Shell. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contract herein involved. Nor shall the grant of the certificate aforesaid for service to El Paso imply approval of all of the terms of the contract, as amended, particularly as to the cessation of service upon termination of said contract, as amended, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sale of natural gas subject to said certificate.

(F) The gas contract, dated May 25, 1961, between Shell and El Paso, and the amendment thereto, dated August 15, 1962, is hereby accepted for filing as Shell Oil Company FPC Gas Rate Schedule No. 253 and Supplement No. 1 thereto, respectively, to become effective on the date of initial delivery.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MIDWESTERN GAS TRANSMISSION COMPANY AND TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP63-167

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 8, 1963)

On December 12, 1962, Midwestern Gas Transmission Company (Midwestern) and Texas Eastern Transmission Corporation (Texas Eastern) filed in Docket No. CP63-167 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of an emergency interconnection between the pipeline systems of the two companies and the exchange of the natural gas, all as more fully set forth in the application.

The proposed interconnection will be located at the point where Midwestern's 30-inch line crosses Texas Eastern's 24-inch line in Pike County, Indiana. The estimated cost of the proposed facilities is $7,700, to be financed from funds on hand.

An agreement between the Applicants, dated September 14, 1962, provides for the utilization of the proposed facilities when either company is confronted with an emergency which can be alleviated by the deliveries of natural gas from the other. Either party, upon request from the other, will make emergency deliveries of natural gas when possible without impairment of service obligations to others. All emergency deliveries will be made on gas-for-gas exchange basis.

Pursuant to due notice, a public hearing was held in Washington, D.C., on February 26, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Midwestern Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of May 12, 1959, in Docket No. G-16841 (21 FPC 653).

(2) Applicant, Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 10, 1947, in Docket No. G-880 (6 FPC 148).

(3) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicants are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities and the exchange of natural gas by Applicants is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicants, Midwestern Gas Transmission Company and Texas Eastern Transmission Corporation, to construct and operate the proposed facilities and to exchange natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman, Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SUN OIL COMPANY, DOCKET NO. RI63–129; AREA RATE PROCEEDINGS, ET AL., DOCKET NO. AR61–2, ET AL.

ORDER PERMITTING SUBSTITUTION OF LESSER RATE UNDER SUSPENSION PROCEEDING, TERMINATING THE INDIVIDUAL HEARING PROCEDURE AND CONSOLIDATING SAID PROCEEDING WITH AREA RATE PROCEEDINGS

(Issued March 8, 1963)

On February 18, 1963, Sun Oil Company (Sun) filed a motion in Docket No. RI63–129 requesting that it be permitted to substitute a renegotiated rate of 23.675¢ per Mcf in lieu of a proposed 23.8333¢ [1] per Mcf periodic rate for its Jurisdictional sale of natural gas to Tennessee Gas Transmission Company (Tennessee Gas) from the Lower Mud Lake Field, Cameron Parish, Southern Louisiana. In its motion, Sun further requested that it be permitted to retain the present date of June 1, 1963, as the date that Sun may move to place the substituted rate in effect and that further proceedings in Docket No. RI63–129 be held in abeyance. No protest to Sun's motion has been filed.

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[1] The 23.8333¢ per Mcf rate is designated as Supplement No. 3 to Sun Oil Company's FPC Gas Rate Schedule No. 119 and such rate is suspended until June 1, 1963, in Docket No. RI63–129.

Hearings were held before a presiding examiner commencing on January 14, 1963 and recessed on January 22, 1963 in the consolidated proceedings involving *Hunt Oil Company*, Docket No. RI63–128 and *Sun Oil Company*, Docket No. RI63–129, with the staff and Interveners resting in the *Sun* proceeding after the cross-examination of Sun's case-in-chief. By order issued February 11, 1963, 29 FPC 290, the Commission among other things, severed the *Sun* proceeding in Docket No. RI63–129 from the *Hunt* proceeding in Docket No. RI63–128, waived the intermediate decision in the *Sun* case, and established briefing dates.

It should be noted that the Commission has previously suspended 23.675¢ per Mcf rates for jurisdictional sales to Tennessee Gas in South Louisiana without setting such proceedings for immediate hearings. See: *Sun Oil Company*, Docket No. RI63–112, *Forest Oil Corporation (Operator), et al.*, Docket No. RI63–120, and *Sohio Petroleum Company*, Docket No. RI63–121.[2] While the proposed 23.8333¢ per Mcf rate would have a triggering impact of approximately $237,000 annually under the activation of favored-nation clauses for sales to Tennessee Gas, the proposed substitution rate will have no triggering impact, thereby eliminating the need for the immediate hearing procedure. Consequently, we believe that Sun should be permitted to make the substitute rate filing in Docket No. RI63–129, that the individual hearing in Docket No. RI63–129 should be terminated and that the lawfulness of the increased rate of 23.675¢ per Mcf should be determined in area rate proceedings by consolidation of Docket No. RI63–129 with the South Louisiana area rate proceedings in Docket No. AR61–2, *et al.* The record made in the separate hearing in Docket No. RI63–129 shall not be included in the record in Docket No. AR61–2.

The Commission orders:

(A) Sun is hereby permitted to withdraw its 23.8333¢ per Mcf rate in Docket No. RI63–129 and substitute therefor a rate of 23.675¢ per Mcf subject to the suspension proceeding in Docket No. RI63–129, and the substituted rate is hereby suspended in Docket No. RI63–129 until June 1, 1963 and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(B) The individual hearing in Docket No. RI63–129 is hereby terminated and Docket No. RI63–129 is consolidated with Area Rate Proceeding, *et al.*, Docket No. AR61–2, *et al.*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP63–84

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 8, 1963)

On October 8, 1962, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP63–84 and application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, installation and operation of approximately 43.5 miles of 36- and 30-inch pipeline loops, 50,100 additional compressor horsepower

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[2] The Commission's action on the indicated docketed proceedings is contained under the lead docket *Sunset International Petroleum Corporation, et al.*, Docket No. RI63–107, *et al.*, order issued October 17, 1962 (not reported).

in existing main line stations, and miscellaneous appurtenant facilities, for the purpose of rendering additional natural gas service to meet the increased peak day requirements of 65,423 Mcf of natural gas at 14.73 psia for thirty of Applicant's existing resale customers as of November 1, 1963, on a firm basis, all as more fully set forth in the subject application.

The estimated over-all capital cost of the facilities proposed herein is $17,500,000 which will be financed initially through short-term bank loans. Permanent financing is to be accomplished through the issuance of long-term securities in conjunction with a future major financing program covering these and other proposed facilities.

No issue as to rates or gas supply is involved in this proceeding.

The application as filed also requested that the present allocation of 25,219 Mcf of natural gas per day to Applicant's customer Carolina Pipeline Company be reduced to 12,500 Mcf per day in accordance with a letter agreement dated February 28, 1962, between Applicant and Carolina Pipeline Company.

Due notice of this application setting hearing for 9:30 a.m. on February 25, 1963, was issued January 23, 1963, and published in the Federal Register on January 30, 1963 (28 F.R. 880).

A number of petitions to intervene and notices of intervention have been filed in this docket by various interested companies and State Commissions but in all cases, with two exceptions, petitioners expressly stated that they did not request formal hearing, that they did not object to the hearing and disposition of the application under the shortened procedure provided for by the Commission's Rules and that the respective filings were made to preserve the petitioners' right to appear and participate fully in the event that the application should be set for formal hearing.

The two exceptions referred to are the Notice of Intervention filed on February 7, 1963, by the South Carolina Public Service Commission, and the Petition for Leave to Intervene filed on February 15, 1963, by Peoples Natural Gas Company of South Carolina, both of which filings were directed to so much of the application in Docket No. CP63–84 as requested the reduction in the present allocation of natural gas to Carolina Pipeline Company hereinbefore referred to.

On February 15, 1963, Applicant filed an amendment to its original application in the subject docket eliminating so much thereof as requested the reduction in the allocation to Carolina Pipeline Company and stating that said request was being resubmitted as an application for amendment in Docket No. G–10000. A representative of the South Carolina Public Service Commission has stated informally that this amendment removed the objection of that Commission to granting of the application-in-chief and that said Commission would not, therefore, make an appearance at the hearing set for February 25, 1963.

Pursuant to the notice issued on January 23, 1963, a public hearing was held in Washington, D.C., at 9:30 a.m. on February 25, 1963, respecting the matters involved in and the issues presented by the application in Docket No. CP63–84, as amended by the filing of February 15, 1963. Appearances were entered on behalf of the Applicant, on behalf of Peoples Natural Gas Company of South Carolina, and on behalf of the Commission's staff. No protest to the granting of the application, as amended, having been received, and no other appearances having been entered, Applicant's counsel moved orally that the intermediate decision procedure be omitted and that the Commis-

sion render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

Inasmuch as the abridged hearing procedure is being used herein, no further action on the various intervention petitions and notices appears necessary.

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principle place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G–1143 (7 FPC 145).

(2) The facilities to be constructed by Applicant, as hereinbefore described and as more fully described in the application, as amended, in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, as integral parts of Applicant's existing pipeline system and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations. Applicant should be required to complete and place in actual operation the facilities hereinafter authorized within one year from the date on which this order issues.

(6) A request during the public hearing by Applicant's counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Transcontinental Gas Pipe Line Corporation to construct and operate the facilities hereinbefore described, all as more fully described in the application in Docket No. CP63–84, as amended, for the transportation and sale in natural gas in interstate commerce for resale as therein set forth, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations. Applicant shall complete and place in actual operation the facilities hereinabove authorized within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr. and Charles R. Ross.

APPALACHIAN POWER COMPANY, PROJECT NO. 2317

ORDER ISSUING PRELIMINARY PERMIT

(Issued March 11, 1963)

Application was filed on June 20, 1963, by Appalachian Power Company (Applicant), of Roanoke, Virginia, for a preliminary permit for twenty-four months under Section 4(f) of the Federal Power Act for proposed Project No. 2317 to be located on the New-Kanawha River, Grayson County, Virginia, and Allegheny County, North Carolina, in the vicinity of Independence, Fries, and Galax, Virginia.

As described in the application, the proposed project would be a pump-storage development comprising: *Upper Dam and Reservoir*—a dam (type of construction undetermined) to be located on the New-Kanawha River about 5 miles upstream from the mouth of Elk Creek, a reservoir with an area of 15,000 acres at full pool and a capacity of 960,000 acre-feet extending about 36 miles upstream, and a powerhouse; and *Lower Dam and Reservoir*—a dam (type of construction undetermined) to be located about 12 miles downstream from the Upper Dam, a reservoir with an area of 2,000 acres at full pool and a capacity of 60,000 acre-feet extending to the Upper Dam, and a powerhouse. The powerhouse will be located near each dam, will be supplied with water by means of tunnels or penstocks, and will have a combined installation of about 400,000 kilowatts.

From Point Pleasant, West Virginia, the mouth of the New-Kanawha River, to the junction of the North and South Forks of the New River in North Carolina, is a distance of 352 river miles. The South Fork rises about eighty-five miles south of this junction. In 1900 congressional authorization was required to dam the New River in the vicinity of the proposed lower dam at Fries, Virginia (river mile 304), and a consent was given by special statute. 31 Stat. 264 (1900). Prior to that time Congress had appropriated funds for improvement of navigation on the New-Kanawha from the mouth of Wilson Creek, Virginia (river mile 346) to the mouth of the Greenbrier River. For example, in the River and Harbor Act of 1880 (21 Stat. 180, 185) $24,000 was appropriated for this purpose. The New-Kanawha River has also been improved for navigation downstream from the mouth of the Greenbrier. See *United States* v. *West Virginia Power Co.*, 122 F. 2d 733 (CA4), *cert.* denied 341 U.S. 683.

The Department of the Army, reporting on the application, stated that the proposed development would pre-empt the site of the Moores Ferry project, part of a general comprehensive plan for flood control and other purposes in the Ohio Basin, approved by the Congress in the Flood Control Act of 1938. It was recommended in the report that in the event a license was ultimately issued it should "provide the same functions as would be provided in the authorized Federal project and the operation of any such development should be fully coordinated with existing developments in the basin to assure the maximum public benefits".

The Department of the Interior, in reporting on the application, stated that the Commission lacks jurisdiction to issue a preliminary permit for the proposed project since the Moores Ferry site was authorized for Federal construction under the Flood Control Act of 1938. The North Carolina Electric Membership

Corporation, in a petition to intervene, also questions the jurisdiction of the Commission to issue a preliminary permit. The Department of the Interior further stated that should a preliminary permit be issued, it should include special conditions in the interests of fish and wildlife, mineral resources and archeological salvage.

The Flood Control Act of 1938 (52 Stat. 1215, 1218) approved a general comprehensive plan for flood control and other purposes in the Ohio River Basin which had been submitted by the Chief of Engineers in 1937. The statute incorporated by reference the report of the Chief of Engineers, which recommended the erection of a system of flood-control reservoirs on the tributaries of the Ohio River. Chief of Engineers, *Comprehensive Plan for Ohio and Lower Mississippi Rivers*, H.R. Flood Control Doc. No. 1, 75th Cong. 1st Sess. (1937). The Moores Ferry site was added to the list by the Chief of Engineers in his 1941 Annual Report.

Under the Flood Control Act of 1938 a flood-control project, which is a unit of the approved plan, is authorized for Federal development when it is "selected and approved" for construction by the Chief of Engineers. To it Congress then allocates portions of lump sum appropriations authorized by the Act. Summersville Reservior, now being built on a tributary of the New-Kanawha, illustrates the process of selection and approval by the Chief of Engineers. After preliminary surveys and plans had been completed, the Summersville project was selected for construction "under the general authorization for the Ohio River Basin". 1960 Chief of Engineers Ann. Rep. pt. 2, at 1082; *id.* (1956) at 1101.

As the Flood Control Act of 1938 does not authorize the selection of projects for power development and purposes other than flood control, application was made by the Chief of Engineers to the House Committee on Public Works for authority to study Moores' Ferry on an *ad hoc* basis as a multiple-purpose project. The Committee's resolution of August 5, 1961 authorized study of the advisability of erecting at Moores Ferry a "multiple-purpose reservoir * * * for flood control, hydro-electric power, recreation, low flow regulation for pollution abatement and water supply, and other allied water uses."

In accordance with the above resolution, the Corps of Engineers expended $35,000 from funds previously allocated for general investigations in the Ohio Basin during fiscal year 1962. The expenditure was reported to the Appropriations Subcommittee of the House in the course of hearings on public works appropriations for 1963. In support of expanded study, the Ohio River Division Engineer testified that "The original study on Moores Ferry showed that the benefits were not adequate as against the costs for the Moores Ferry Reservoir." Hearings before the Subcommittee of the House Committee on Appropriations, 87th Cong., 1st Sess., pt. 1, at 228–9, 232, 234 (1962). Request was made for an additional $75,000 to be included in the "general investigations" appropriation. Id. at 232.

The House Committee deleted the latter amount requested for study of Moores Ferry. Hearings before the Subcommittee of the Senate Committee on Appropriations, 87th Cong., 1st Sess., pt. 2, at 2939 (1962). In its report accompanying the Public Works Appropriations Act, 1963, the House Committee on Appropriations, speaking in general of its recommended reduction in the amount to be spent for civil works investigations, said: "The Committee is not convinced of the need for expansion of the research work being done under this heading." H.R. Rep. No. 2223, 87th Cong., 2d Sess. 13 (1962).

It thus appears that the Moores Ferry project has not been selected and approved by the Chief of Engineers for construction under the Flood Control

Act of 1938. Instead the Corps of Engineers proposes to compare the project with a multiple-purpose project not included in the Act, and funds for this purpose have not been made available. In any event, under the resolution permitting this study, Moores Ferry is a specific project, disassociated from the authorization process applicable to units in the comprehensive flood control plan. As the language of the resolution indicates, ultimate authorization, if any, would entail a basic change by Congress in the comprehensive plan it previously approved in the Flood Control Act of 1938.

Although Moores Ferry is a unit in a comprehensive flood control plan approved by Congress, it has not been "selected and approved" for development by the United States. On familiar principles, congressional approval of a general comprehensive plan for the development of a river basin does not, without more, authorize the development of a particular site. [U.S. *ex rel Chapman* v. *F.P.C.*, 345 U.S. 154.]

No construction is authorized under a preliminary permit, nor does such a permit grant a right to a license. Such a permit only gives the permittee, during the period of the permit, the right of priority of application for license while the permittee undertakes the necessary studies and examinations required by Section 9 of the Federal Power Act in order to determine the economic feasibility of the proposed project, the means of securing the necessary financial arrangements for construction, the market for power, and all other information necessary for inclusion in an application for license, should one be applied for under the permit. Expenditures made by a permittee for studies and examinations under a preliminary permit are entirely at the permittee's risk that the project may prove to be economically infeasible, that the Commission may determine that its plan is not best adapted to a comprehensive development of the water resources or that the Commission in its judgment may determine that the development of the water resources for public purposes should be undertaken by the United States itself. The circumstances of this case make the foregoing caution of special significance.

As pointed out, the proposed project would be a pumped storage development. Its exact location and design would be the subject of study during the period of the preliminary permit. Until such studies are completed, it is not possible to accurately assess the effect of the proposed project on the use of the waters involved for public purposes. In such circumstances, the apparent policy of the Federal Power Act would indicate that a preliminary permit should be issued to maintain priority of application for a license to the permittee who undertakes such studies in the event non-federal development of the project is later authorized.

The Commission finds:

(1) The applicant is a corporation organized under the laws of the Commonwealth of Virginia and is qualified to do business in the States of West Virginia and Tennessee.

(2) The New-Kanawha River, from its mouth at Point Pleasant, West Virginia, at least as far upstream as the confluence of its North and South Forks in North Carolina, is a navigable water of the United States.

(3) The project will be located on a navigable water of the United States.

(4) Public notice of the application has been given as required by the Act. No conflicting application is before the Commission.

(5) The proposed project would have an effect, by regulation of the flows of the New-Kanawha River, on the constructed Government Bluestone Reservoir, located about 160 miles downstream.

The Commission orders:

(A) This preliminary permit is issued to Appalachian Power Company (hereinafter referred to as the Permittee) for a period of 24 months, effective as of March 1, 1963, for the sole purpose of maintaining priority of application for a license for Project No. 2317, affecting navigable waters of the United States, subject to the terms and conditions of the Federal Power Act which is hereby incorporated by reference as a part of this permit, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) This permit is also subject to the terms and conditions set forth in Form P–1, entitled "Terms and Conditions of Preliminary Permit" (16 FPC 1303), which terms and conditions (designated as Articles 1 through 8) are attached hereto and made a part hereof; and further subject to the following special conditions set forth herein as additional articles:

Article 9. The Permittee shall submit at the close of each six-month period from the effective date of this permit to the Regional Engineer, Federal Power Commission, New York, New York, having supervision over the project, or to such other officer as the Commission may designate, accurate statements of the work accomplished during the period and of the work contemplated under this permit for the ensuing period.

Article 10. The Permittee shall, during the period of the permit, cooperate with and consult with the District Engineer, Corps of Engineers, Huntington, West Virginia, in developing a plan for the development of the water resources of the area consistent with proposed and existing developments in the New River basin to assure maximum public benefits.

Article 11. The Permittee shall, during the period of the permit, cooperate with the U.S. Fish and Wildlife Service, the Virginia Commission of Game and Inland Fisheries and the North Carolina Wildlife Resources Commission for the purpose of planning and designing adequate conservation measures to mitigate and compensate for the loss of or damage to existing fish and wildlife resources and to develop and improve these resources where practicable.

Article 12. The Permittee shall consult with the Director, Bureau of American Ethnology, Smithsonian Institute, Washington 25, D.C., concerning the cost of archeological surveys and salvage, if any, in the area to be inundated by the proposed reservoirs.

Article 13. The Permittee shall consult with the U.S. Bureau of Mines as to mineral recovery which may be necessary in the area to be inundated by the proposed reservoirs.

Article 14. The Permittee shall for the purpose of assuring the cooperation required by the terms of the permit, designate a liaison officer to act for the Permittee in keeping the several agencies specified in this permit currently informed, and such liaison officer shall communicate with such agencies within 60 days from the date of issuance of this permit.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this preliminary permit. In acknowledgment of the acceptance of this preliminary permit, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-4

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 11, 1963)

On July 5, 1962, Northern Natural Gas Company (Applicant) filed in Docket No. CP63-4 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities to enable Applicant to take into its certificated pipeline system supplies of natural gas which will be purchased from producers thereof in the Hunt-Baggett Field in Crockett County, Texas, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 47.7 miles of pipeline, measurement facilities, and a dehydration plant. The total cost of the proposed facilities is estimated to be $1,408,900, which will be financed from funds on hand and cash generated from operations.

Applicant estimates that there are approximately 78,045 MMcf of gas at 14.73 psia dedicated to it in the Hunt-Baggett Field, which Applicant proposes to purchase at an initial price of 16 cents per Mcf. The application states that these volumes of gas will further supplement Applicant's total gas supply but will not result in any increase in Applicant's system salable capacity.

Pursuant to due notice, a public hearing was held in Washington D.C., on February 27, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) Public convenience and necessity require that the certificate issued hereinafter should be conditioned upon the issuance to and acceptance by the producers of their related certificate authorizations to sell gas to Applicant.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The certificate issued by paragraph (A) above is conditioned upon the issuance to and acceptance by the producers of their related certificate authorizations to sell gas to Applicant.

(D) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (B) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP61-132

ORDER DENYING APPLICATION FOR REHEARING

(Issued March 12, 1963)

On January 14, 1963, Mid-American Pipeline Company, an intervenor in the above-entitled case, applied for rehearing of the Commission's opinion and order issued on December 28, 1962, 28 FPC 1155. The majority of points raised in Mid-America's rehearing application are merely restatements of arguments raised in its exceptions which have been covered in our opinion and order and which do not warrant further discussion here. We direct our attention to the remaining arguments.

Mid-America urges that our order is invalid insofar as it is based on the conclusion that the extraction plant facility at Bushton is non-jurisdictional. Our treatment of this facility as non-jurisdictional is based on a prior order in this docket to that effect where full consideration was given to the question. *Northern Natural Gas Company*, Docket No. CP61-132, 25 FPC 1205, rehearing denied, 26 FPC 418 (1961). Mid-America has presented no arguments which would alter our earlier conclusion.

Mid-America objects to our alleged failure to find a public need for the non-jurisdictional extraction plant and proposed pipeline, contending that this precluded a finding of a public need for the jurisdictional facilities which we certificated. We concluded and here reaffirm that the proposed facilities are required by the public convenience and necessity within the meaning of Section 7 of the Natural Gas Act because they provide, without cost to Northern's jurisdictional customers and without impairing Northern's continuing ability to serve such customers, an additional use for this wasting natural resource. We

reach this conclusion in conjunction with our findings that Northern's 20-year contract with Products Company adequately demonstrates that the expenditures it will make for the facilities will not be financially imprudent, and that the condition in the certificate requiring a price reduction to Northern's jurisdictional customers constitutes a reasonable provision to ensure that in every respect they will occupy at least as good a position after the Products Company commences operations as before. We reiterate our view that the standard of Section 7 does not require us to determine whether there is a need for the products of the customer to be served by proposed facilities any more than we would be required to determine whether there is a "public need" for the products of a steel or cement plant to whom Northern might wish to construct facilities to serve. Moreover, as an alternative ground, we explicitly reviewed the relevant materials and concluded that, assuming *arguendo* the relevancy of those issues, the record supports the examiner's conclusion that there is a market for the Products Company LPG's and that its operation is economically feasible.

Mid-America objects to our considering the relationship of the proposed facilities to Northern's helium extraction operation, arguing that the matter was not developed in the record. It is true that the exact nature of Northern's helium production and the amount of LPG's extracted incidental thereto are not shown by the record. However, it is clear from the record and argument before the Commission that the purpose and effect of Northern's proposal is to increase the amount of natural gas at the Bushton location and to strip the liquids therefrom. It was acknowledged by Mid-America that the stripping process is a prerequisite to the removal of helium from the gas stream. Therefore, one result of Northern's proposal will be that increased amounts of natural gas in the condition necessary for helium removal will be available at Northern's helium extraction plant if needed for defense or scientific purposes. As our opinion makes clear, however, we found that the Northern application completely satisfied the minimal conventional elements necessary for a certificate, apart from the helium factor which was merely an additional consideration.

Mid-America also raises objections relating to alleged pre-emption of Northern's transmission capacity. We found that the price reduction to Northern's jurisdictional customers not only included costs representing Products Company's use of Northern's jurisdictional facilities but also reimbursed Northern's jurisdictional customers, through rate reductions, in the amount of one million dollars per year for the alleged loss of cheap expandibility. We find that this disposition of the question of compensation for pipeline capacity satisfies the requirements of public convenience and necessity. In this regard we note that because the amount and cost of future expansion of Northern's pipeline capacity is totally unknown at this time, we do not attempt to allocate conclusively a cost thereof to the extraction operation. Rather, we find that his substantial reduction in rates is a satisfactory interim compensation for any loss of cheap expandibility until such loss can be more accurately measured.

Another objection by Mid-America relates to the effect of this proposal on Northern's reserves. Mid-America does not repeat its objection that the proposed project will render Northern's reserves inadequate. Rather, it argues that operation of the extraction plant will consume a portion of Northern's low costs reserves which will have to be replaced with higher cost reserves, resulting in increased costs to Northern's jurisdictional customers. This is a certificate case, not a rate case, and there is no attempt here to charge jurisdictional customers with the cost of higher priced gas. The Commission will of course determine the extent to which Northern's cost of gas should be allocated to extraction plant operations in any future rate proceeding involving Northern.

Mid-America protests also our suggestion that objections to the sufficiency of an applicant's evidence are more properly made at the hearing itself where they can be immediately corrected than on appeal to the Commission. This statement correctly reflects our views and was intended for the benefit of parties in future proceedings. It did not, however, detract from our specific finding that the record before us in this case was entirely adequate for the purposes of or opinion, where cost allocations were used only to determine the appropriateness of the Settlement Agreement.

Mid-America's final objection relates to our conditioning Northern's certificate to require the rate reductions agreed to by Northern and its utility customers in the Settlement Agreement. At the outset we emphasize the posture of the case before us. We are not at this time determining the just and reasonable rates to Northern's customers nor the proper allocation of costs to the Products Company operation. Rather, we have before us an application for a certificate under Section 7 in which it is our duty to determine whether the over-all terms of the certificate are required by the public convenience and necessity. Insofar as this test concerns rates, it is necessarily more circumscribed than a determination of just and reasonable rates under Section 4 or 5. In concluding that the provisions for rate adjustments in the Settlement Agreement are required by the public convenience and necessity, we noted that they were based on the cost allocation method approved by the examiner which we found to be reasonable, upon an average Btu content which we found to be fully supported by the record, and upon a further reduction of 5.5 cents per Mcf in the demand charge to compensate in an amount of approximately one million dollars annually the customers of Northern for alleged pre-emption of cheap expandibility, which we also found to be reasonable. We determined that this reduction translated into a unit cost allocable to Products Company of 65.79 cents. We further found the comparable cost proposed by Mid-America of $1.007 was based on an improper method of Btu allocation and that its alternate proposal of 66.6 cents was based on an erroneous assumption as to deliveries on peak days to Northern's customers. On the basis of all of these findings, we concluded and here reaffirm that the settlement figure constitutes a reasonable provision, supported by the record, to ensure that Northern's utility customers would occupy at least as good a position after Products Company commences operations as before, and therefore this element of the application satisfied the requirements of the public convenience and necessity.

The Commission orders:

The application for rehearing is denied.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Charles R. Ross.

PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 2071

ORDER APPROVING REVISED AND SUPPLEMENTAL PROJECT EXHIBITS

(Issued March 12, 1963)

On May 22, 1962, Pacific Power & Light Company, licensee for major Project No. 2071 [issued April 24, 1951; 10 FPC 917], filed for Commission approval a revised Exhibit K and a supplemental Exhibit L.

Commission approval of the exhibits would incorporate within the project boundary a low diversion dam and weir on Speelyai Creek, tributary to Lewis River, on which the project is located, and a canal 4,000 feet long extending from the weir to Yale Reservoir. A 24-inch diameter pipe through the dam permits

15 cfs of water to flow down Speelyai Creek to be utilized in anadromous fish rearing ponds. Flows in excess of 15 cfs are diverted to Yale Reservoir.

The dam is an earth-fill structure 950 feet long with a crest approximately 15 feet above streambed. A staff analysis of the theoretical stability of the structure shows that the structure is well within reasonable limits for safety. An additional staff analysis shows that the capacity of the concrete diversion weir is about 12 times that required to pass the flood of record.

The dam and other facilities, plus a fish hatchery downstream on Speelyai Creek, were constructed in 1959 under a "Memorandum of Agreement" among the licensee, Public Utility District No. 1 of Cowlitz County, and the Department of Fisheries of the State of Washington for the purpose of making Speelyai Creek suitable for use in connection with the fish protection and conservation program undertaken by the three parties to the agreement. The licensee states that the average net flow diverted into Yale Reservoir represents an additional value in average annual energy from Yale powerhouse sufficient to balance the annual cost of the facilities to the parties to the aforementioned agreement.

The Department of the Interior has advised that its studies show that the diversion of flood waters in excess of 15 cfs has had no adverse effect on fish resources and that the anadromous fish reared through the release of 15 cfs from the dam are making a contribution to sport and commercial fishing. No additional conditions in the interest of fish and wildlife resources were recommended for inclusion in the license for the project.

While our approval of the revised Exhibit K would add 35.72 acres of land to the project, no lands of the United States are involved.

The Commission finds:

Revised Exhibit K, Sheet 4 (FPC No. 2071–41) and supplemental Exhibit L, Sheet 8 (FPC No. 2071–40) conform to the Commission's rules and regulations and should be approved as part of the license for the project, and Exhibit K, Sheet 4 (FPC No. 2071–34), now part of the license and which has been superseded, should be eliminated from the license.

The Commission orders:

(A) The exhibits described in the above finding as conforming to the Commission's rules and regulations are hereby approved as part of the license for Project No. 2071, and the exhibit described in the same finding as being superseded is hereby eliminated from the license for the project.

(B) Subparagraph (b) on page 918 of the license for Project No. 2071 is modified by adding after the words "near Merwin plant," appearing in line 10 of the subparagraph, the following: "a low earth-fill diversion dam and concrete overflow weir on Speelyai Creek and a 4,000-foot long unlined canal extending from the diversion dam to Yale Reservoir;".

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PETROLEUM OFFSHORE LEASEHOLDS, INC. (OPERATOR), ET AL., DOCKET NO. G–19010

ORDER APPROVING PROPOSED SETTLEMENT AND CONDITIONALLY ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 12, 1963)

On July 20, 1959, Petroleum Offshore Leaseholds, Inc. (Operator) *et al.* (Offshore), filed in Docket No. G–19010 an application for a certificate of public

convenience and necessity pursuant to Section 7 of the Natural Gas Act as successor in interest to Phillips Petroleum Company (Phillips) to sell gas to Transcontinental Gas Pipe Line Company (Transco).[1] Said gas is produced from blocks 172 and 184, Eugene Island Area, approximately 42 miles off the southern coast of Louisiana. On April 28, 1960, Offshore was granted temporary authority to sell the gas to Transco as proposed, subject to the condition that Offshore refund to Transco any amounts collected in excess of the amount resulting from the rate finally determined to be proper in Docket No. G–19010. Offshore filed its acceptance of temporary authority and the sale commenced thereunder.

On October 8, 1962, Offshore filed a petition for the issuance of an order granting a permanent certificate of public convenience and necessity in accordance with its application as modified by a settlement agreement. No party has opposed this proposal.

Under the terms of the settlement agreement, commencing July 1, 1962, the rate charged for natural gas under Offshore's Rate Schedule No. 1 shall be 19.0¢ per Mcf subject to possible change, as therein provided. Offshore agrees that no rate change shall be filed prior to July 1, 1967. As to offshore production not subject to the taxing authority of the State of Louisiana, Offshore shall be entitled, during the moratorium period, to file a rate increase in an amount equal to half of the amount of any tax which may be imposed by the United States Government. If the offshore production is held to be subject to the taxing authority of the State of Louisiana, the price for which Offshore may file during the moratorium shall be 20.625¢ per Mcf inclusive of tax reimbursement, effective as of the date of the initial payment of such tax but not earlier than the date of filing of the rate increase. The prices fixed in the settlement agreement are subject to change and revision upward or downward as the result of any final determination prescribing a rate or rates applicable to the gas subject to the agreement in Docket No. AR61–2 or other applicable area rate proceedings, from the date of such determination.

Offshore shall refund to Transco the difference between the amount per Mcf actually collected for gas delivered under its Rate Schedule No. 1 and the settlement price of 19.0¢ multiplied by the volumes delivered in June 1962, and in each successive prior month until a dollar amount has been compiled which is equal to ⅔ of the difference between the amount paid to Offshore by Transco for gas delivered from the date of initial delivery and the amount that would have been due had a rate of 19.0¢ prevailed during the entire period. Interest shall be paid at a rate of 7% per annum. No interest shall accrue after July 1, 1962.

Transco shall have the right to make up gas paid for but not taken over a four year period in lieu of the two year period provided for in the contract for sale comprising Offshore's Rate Schedule No. 1.

The settlement agreement further provided that none of the parties agreeing thereto would be prejudiced in any position taken in any other proceeding.

By letter dated November 6, 1962, Offshore stated that amounts collected in excess of the settlement price with respect to deliveries made on or after July 1, 1962, will be refunded, without interest, at the same time and in addition to the dollar amounts of principal and interest expressly provided to be refunded in the settlement proposal.

The proposal makes provision for the outcome of Area Rate Proceeding AR61–2. It recognized that our final order in that proceeding may require a downward adjustment in the settlement price, and it also permits upward ad-

[1] Phillips had theretofore been granted a certificate of public convenience and necessity to make these sales in Docket No. G–14244,

justment in price, prior to July 1, 1967, according to any specifically applicable area rate or rates ultimately determined in that proceeding. Although the settlement seeks to anticipate in part the nature of our final determinations in Docket No. AR61–2, our definitive interpretation of "specifically applicable area rate" will obviously have to await conclusion of the area proceeding. The settlement also provides that adjustment in price growing out of the Area Rate Proceeding should go into effect upon conclusion of judicial review of our final order. However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that area rate proceeding and our approval of this settlement will be so conditioned. We find no reason to toll the accrual of interest, as noted by Offshore in its letter of November 6, 1962, and shall require the payment of interest through October 31, 1962, the last day of the month in which the settlement proposal was submitted.

The Commission finds:

(1) Petroleum Offshore Leaseholds, Inc. (Operator), *et al.*, is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sale of natural gas is subject to the jurisdiction of the Commission, and such sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Offshore is able and willing properly to do the act and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and a certificate should be issued as ordered below.

(5) The conditions attached to the certificate herein issued are required by the public convenience and necessity.

(6) No party has opposed waiver of intermediate decision in these proceedings.

The Commission orders:

(A) The motion for waiver of the intermediate decision procedure is granted.

(B) A certificate of public convenience and necessity is hereby issued upon the conditions set forth herein to Petroleum Offshore Leaseholds, Inc. (Operator), *et al.*, for the sale of natural gas in interstate commerce for resale as proposed, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in Offshore's application.

(C) The certificate issued by paragraph (B) above, is granted upon the express condition that Offshore comply fully with the terms of the settlement proposal referred to above and which was entered into evidence in this proceeding, which settlement is expressly approved, except that interest shall be paid through October 31, 1962, the last day of the month in which the settlement proposal was submitted.

(D) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposal, Offshore shall report to the Commission, in writing and under oath, the amount of the refunds made to Transcontinental Gas Pipe Line Company, showing separately the amount of

principal and interest so paid and the basis used for such determination, together with a release from Transco showing receipt of the refunds in conformity to the settlement as approved.

(E) Upon full compliance of Offshore with all the terms of this order and of the settlement proposal, Offshore shall be relieved of any further refund obligations in this proceeding and said proceeding shall terminate.

(F) The certificate herein issued is not transferable and shall be effective only so long as Offshore continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable sales, regulations and orders of the Commission.

(G) The grant of the certificate herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Regulations thereunder; *provided, however*, that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(H) The grant of the certificate herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Offshore, particularly any proceeding under Section 5 of the Natural Gas Act or Section 5(c) of the Outer Continental Shelf Lands Act, and is without prejudice to claims or contentions which may be made by the Commission, Offshore, the Commission staff, or any affected party herein in any other proceeding.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNITED FUEL GAS COMPANY, AMERE GAS UTILITIES COMPANY, AND ATLANTIC SEABOARD CORPORATION, DOCKET NO. CP61–107

ORDER DENYING APPLICATION FOR REHEARING

(Issued March 12, 1963)

On February 15, 1963, Lynchburg Gas Company filed an application for rehearing of the Commission's Opinion and Order No. 377 issued January 16, 1963, 29 FPC 90. Lynchburg alleges that the Commission erred in its approval of the transfer of Boldman Compressor Station to United, that it again erred in authorizing the merger of Amere into United and, finally, that it erred for yet a third time in approving the transfer of Atlantic's KA and KB transmission facilities in Kentucky and southern West Virginia. Lynchburg requests that upon due reconsideration of our opinion, we vacate the order as therein issued and enter an order denying the proposed transfers of ownership as not being required by the public convenience and necessity.

We have considered the assignments of error and the grounds for rehearing set forth in the application and have reconsidered our Opinion No. 377. The arguments advanced here by Lynchburg are similar, if not identical, with those advanced by it and other interveners in their briefs before the examiner and rejected by us in the opinion. Except for substituting the word "by" in place of the word "for" in line 2 of finding No. 7, which change is made solely to conform the finding to the terminology of Section 7(e) of the Natural Gas Act and does not otherwise alter the import or effect of the finding as therein stated, all points raised in the application have already been discussed in the opinion. Our conclusions as to these matters remain unchanged. No new facts or arguments

are called to our attention which would be cause for granting rehearing or disturbing the original opinion and order.

The Commission further finds:

The assignments of error and grounds for rehearing set forth in the application present no facts or principles of law which were not fully considered by the Commission when it issued its Opinion No. 377 and order or which, having now been considered, warrant any change in, modification, or rehearing of such Opinion and Order, except as specified below.

The Commission orders:

(A) The word "by" is hereby substituted for the word "for" in line 2 of finding No. 7.

(B) The application for rehearing filed by Lynchburg Gas Company on February 15, 1963, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Charles R. Ross.

UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION; FALCON DAM PROJECT, DOCKET NO. E-6577

ORDER CONFIRMING AND APPROVING RATES AND CHARGES

(Issued March 12, 1963)

On January 17, 1963, the Bureau of Reclamation, Department of the Interior (Reclamation), filed for confirmation and approval by the Federal Power Commission, pursuant to the provisions of the Act of Congress, dated June 18, 1954 (68 Stat. 255), wholesale power rates in a proposed contract between the United States and the Central Power and Light Company for the sale of all of the United States' share of electric energy not otherwise required in the operation of the international project, which is generated at the Falcon Dam, located on the Rio Grande River on the international boundary between the United States and Mexico.

The proposed rates and charges as set forth in the contract are as follows:

Section 7

The contractor shall pay for the electric service furnished hereunder in accordance with the following rate schedule, charges, and conditions: 4.0 mills per kilowatt-hour for energy delivered between the hours of 8 a.m. and 10 p.m. (Saturdays and Sundays excepted); and 1.75 mills for energy delivered at any other time.

The annual aggregate of the monthly charges shall not exceed $300,000 for the first 100,000,000 kilowatt-hours which are delivered to the Contractor during any calendar year.

All energy delivered in excess of 100,000,000 kilowatt-hours during any calendar year shall be at a rate of 1.0 mill per kilowatt-hour.

Section 10

At times when electric power and energy is not available from the international project for operations of project facilities, the Contractor shall deliver to the United States for the operation of said project facilities such energy as the United States may require for that purpose. Such energy shall be returned by the United States to the Contractor kilowatt-hour for kilowatt-hour at times

and rates of delivery to be mutually agreed upon by the parties hereto. It is the intent of said parties that interchange energy shall be returned as promptly as circumstances permit.

The parties hereto further agree that the Contractor may demand and receive payment from the United States adequate to balance the interchange energy account under any or all of the following conditions:

1. Upon termination of the contract;

2. By mutual agreement of the parties hereto at any time during the term hereof; or,

3. When the interchange energy account remains unbalanced for a period of one year.

Settlement of the interchange energy account by payment shall be at a net value of 3.0 mills per kilowatt-hour for all energy which may remain as a credit to the Contractor in the interchange energy account.

The Falcon Dam was constructed by the International Boundary and Water Commission of the United States and Mexico as a multi-purpose project for conservation and generation of power. The power generated at the project, pursuant to arrangements by treaty, is equally divided between the United States and Mexico. The rates in the proposed contract are applicable to the United States' share of saleable power generated at the project. The International Boundary and Water Commission had originally estimated that the United States' share of saleable capacity and energy was 20,000 kw of peaking capacity and 120,000,0000 kwh of nonfirm energy, of which approximately 100,000,000 kwh was to be considered as associated with the peaking capacity and approximately 20,000,000 kwh was dump energy. Since that time, Reclamation has reported that the sale of peaking capacity has proved to be incompatible with actual project operations. This is due to the fact that water releases from the Falcon reservoir are controlled entirely by irrigation and other downstream requirements. There are times when no power can be generated, so that project has no dependable capacity. For example, during the years 1958, 1959 and 1960 there was no power available for a total of 61, 20, and 60 days respectively. In other words, although the economic feasibility of the power portion of the project was based upon the sale of capacity and associated energy, as well as some nonfirm energy, due to the present state of the project, only energy of a quality not susceptible to sale as firm energy is available.

From the beginning of power operations in 1954 until December 28, 1956, Falcon power was sold under a temporary flat rate of 2.7 mills per kilowatt-hour. On December 28, 1956, the Commission approved wholesale power rate schedules R5–S2 and R5–S3 for a five-year period. On January 3, 1962, the Commission extended its approval of these rate schedules for a period ending December 31, 1962. Rate Schedule R5–S2, in brief, provides for the sale of peaking capacity at the rate of $15.00 per kilowatt-year of billing demand, and an energy charge of 1.75 mills per kilowatt-hour for the first 400 kilowatt-hours per kilowatt of monthly billing demand and the balance of energy at 1.0 mill per kilowatt-hour. Rate schedule R5–S3 provides for the sale of dump energy at a rate of 1.75 mills per kilowatt-hour for all dump energy delivered between the hours of 8 a.m. and 10 p.m. of any day except Saturdays and Sundays and a rate of 1.0 mill per kilowatt-hour for all dump energy delivered during other hours.

As explained above, the sale of peaking capacity under R5–S2 has proved to be incompatible with actual project operations. For this reason, on December 15, 1961, Reclamation requested approval of a new rate schedule for a five-year period. The proposed rate schedule provided for rates of 5.5 mills

per kilowatt-hour for peaking energy and 1.5 mills per kilowatt-hour for off-peak energy. Average annual revenues of $444,000 were anticipated and these were estimated to be sufficient to pay all production, replacement, and marketing costs of the United States' portion of power from the Falcon Dam project, including interest charges on the investment allocated to power, and to amortize the initial power investment within 51 years of the beginning of full commercial operation of the project. In response to the Commission's public notice of the filing of this proposed new rate schedule the Central Power and Light Company, the sole purchaser of Falcon Dam Power in the United States, advised the Commission that "the rates and charges submitted for approval are higher than the reasonable and fair value of the power and energy involved and that no market exists or could be developed for such power and energy at such rates and charges." This response was sent to the Department of the Interior, and as a result Interior requested that the filing be withdrawn and the current filing which resulted from subsequent negotiations between Interior and the Company was made in substitution therefor.

Under the proposed contract, the rates can be summarized as 4 mills per kilowatt-hour for energy delivered between the hours of 10 a.m. and 10 p.m.; 1.75 mills for energy delivered at any other time, not over $300,000 for the first 100,000,000 kilowatt-hours per year and 1 mill per kilowatt-hour for energy in excess of 100,000,000 kilowatt-hour per year. The International Boundary and Water Commission presently estimates that the average annual energy available to the United States for marketing to be 120,000,000 kilowatt-hours. The sale of this amount of energy under the currently proposed rates would produce an annual revenue of $320,000. Annual power costs, exclusive of amortization charges are estimated to average about $345,000. Of this estimated annual cost, approximately $180,500 is attributable to interest on the investment. It would therefore appear that although the power revenue to be provided by the project falls short of its total costs, it does exceed the out-of-pocket costs and provides for a substantial portion for the interest on the investment.

According to data submitted by Central Power and Light Company, in FPC Form No. 1, total 1961 production expenses of the Company's steam-electric plants averaged 2.52 mills per kilowatt-hour. The fuel component of such costs averaged 1.84 mills per kilowatt-hour. It would therefore appear that the proposed rates for electric energy of the quality available represent a reasonable value of energy in the area.

The Bureau of Reclamation states that for the past several years it has attempted to market Falcon power to preference customers in the area but, because of the physical location of the plant and the transmission facilities available, the plant is more or less captive. Also, the power can be marketed only to entities having generating facilities or other sources sufficient to supply requirements when Falcon power is not available. It asserts that the proposed rates are the final result of negotiations with the Company and, although the rates fall short of meeting project payout, under the circumstances there is no alternative. Our review of the facts and circumstances pertaining to sale of Falcon Dam power support this conclusion of the Bureau of Reclamation.

Written notice of the proposed new rate schedule was sent to State officials and other interested parties. Notice of the request was also published in the Federal Register on January 31, 1963 (28 F.R. 925), stating that any person desiring to make comments or suggestions for Commission consideration with respect to said rate schedule should submit same in writing on or before February 15, 1963. No comments or suggestions have been received.

The Commission finds:

It is appropriate for the purposes of the Act of Congress, referred to herein, that wholesale power rates in the proposed contract be confirmed and approved for a period of five years beginning with the date of this order.

The Commission orders:

Rates in the proposed contract be and they are hereby confirmed and approved for the sale of the United States' share of electric energy produced at the Falcon Dam for a period of five years from the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Charles R. Ross.

PLACER COUNTY WATER AGENCY, PROJECT NO. 2079

ORDER ISSUING LICENSE (MAJOR)

(Issued March 13, 1963)

Application was filed April 11, 1962 and amended September 10, 1962, by Placer County Water Agency (Applicant) of Auburn, California, for license for a proposed project to be known as the Middle Fork American River Project, and designated as Project No. 2079, to be constructed on the Middle Fork of American River and Rubicon River and their respective tributaries, in the counties of Placer and El Dorado, California, and affecting lands of the United States within the Tahoe and Eldorado National Forests.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, have advised that the proposed project will not have any measurable effect on any flood control, debris control and navigation projects of the Corps, or on flood conditions on the lower American and Sacramento Rivers, and terms and conditions in the interest of flood control or navigation are not deemed necessary for inclusion in any license for the proposed project.

The Department of the Interior, in reporting on the application, has advised it has no objection to the issuance of a license for the proposed project provided such license be conditioned upon certain consummated formal agreement and addendum thereto between Applicant and the Bureau of Reclamation, and contain certain special conditions in the interest of fish and wildlife resources and provide for possible archeological survey and salvage work in the area involved.

The Department of Agriculture, in reporting on the application, offered no objection to issuance of a license for the proposed project provided the terms and conditions of Form L–2 (17 FPC 62), with the exception of Article 13 therein, be included in any such license, together with the inclusion therein of a special condition for the suppression of fires on the lands to be occupied under the license. A Memorandum of Understanding with respect to the proposed project was signed September 18, 1962 by Applicant and on September 25, 1962 by the U.S. Forest Service, and amended and signed by Applicant on October 30, 1962 and by the U.S. Forest Service on November 2, 1962.

The Department of Fish and Game, State of California, in reporting on the application, has advised that extensive biological investigation by the Department to determine provisions to protect the fish and wildlife resources to be affected by the project resulted in the execution of an agreement between the Department and Applicant on July 30, 1962. The Department requested the inclusion in any license issued for the proposed project of a special condition in the interest of fish and wildlife resources.

The Department of Water Resources, State of California, in reporting on the application, has advised that according to the application for license, the proposed project would be desirable, would lead toward full basin development, would be in keeping with the concepts of the California Water Plan, and that the Department is in full accord with the plan of development.

The Commission finds:

(1) The proposed project will affect lands of the United States.

(2) Applicant is a "municipality" as defined in the Federal Power Act, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license for the project.

(3) Public notice of the filing of the application was given as required by the Act. There are no pending protests or petitions to intervene before the Commission. There are no conflicting applications pending.

(4) The issuance of a license as hereinafter provided will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(5) The issuance of a license as hereinafter provided will not interfere or be inconsistent with the purposes for which the Tahoe and Eldorado National Forests were created or acquired.

(6) The project is best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, under the terms and conditions hereinafter imposed.

(7) The installed horsepower capacity of the proposed project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 280,000 horsepower.

(8) The amount of annual charges to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified, and the amount of annual charges to be paid under the license for the use, occupancy and enjoyment of its lands should be determined later as hereinafter provided.

(9) The power to be generated by the project will be sold by Applicant at step-up substations to Pacific Gas and Electric Company for public utility purposes.

(10) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Placer County Water Agency of Auburn, California, (Licensee) under Section 4(e) of the Federal Power Act (Act) for a period of 50 years, effective as of March 1, 1963, for the construction, operation and maintenance of Project No. 2079 upon Middle Fork of American River and Rubicon River and their respective tributaries, and affecting lands of the United States within the Tahoe and Eldorado National Forests, and subject to the terms and conditions of the Act which is incorporated by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2079 consists of:

(1) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined and/or interest in such lands

necessary or appropriate for the purpose of the project, whether such lands or interests therein are owned or held by the applicant or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license, and which are designated and described as follows:

Exhibit	Sheet	FPC No.	Title
J	1 (Rev. 8-1-62)	2079-111	General Project Map.
	2 (Rev. 8-1-62)	2079-112	Do.
	3 (Rev. 8-1-62)	2079-113	Do.
K	1 (Rev. 8-1-62)	2079-114	Duncan Creek Diversion Project Area.
	2 (Rev. 8-1-62)	2079-115	French Meadows Reservoir Project Area.
	3 (Rev. 8-1-62)	2079-116	Do.
	4	2079-26	Do.
	5	2079-27	Do.
K	6 (Rev. 8-1-62)	2079-117	Do.
	7 (Rev. 8-1-62)	2079-118	Do.
	8 (Rev. 8-1-62)	2079-119	Do.
	9 (Rev. 8-1-62)	2079-120	Do.
	10	2079-32	Hell Hole Reservoir Project Area.
	11	2079-33	Do.
	12	2079-34	Do.
	13	2079-35	Do.
	14 (Rev. 8-1-62)	2079-121	Do.
	15 (Rev. 8-1-62)	2079-122	Do.
	16 (Rev. 8-1-62)	2079-123	Do.
	17 (Rev. 8-1-62)	2079-124	Long Canyon Diversion Project Area.
	18 (Rev. 8-1-62)	2079-125	Middle Fork Ralston Interbay Project Area.
	19 (Rev. 8-1-62)	2079-126	Do.
	20 (Rev. 8-1-62)	2079-127	Do.
	21 (Rev. 8-1-62)	2079-128	Do.
	24 (Rev. 8-1-62)	2079-129	Ralston Afterbay Project Area.
	27 (Rev. 8-1-62)	2079-130	Do.
	28 (Rev. 8-1-62)	2079-131	Do.
	39 (Rev. 11-20-62)	2079-132	Tunnels—Project Area.
	40 (Rev. 11-20-62)	2079-133	Do.
	41 (Rev. 11-20-62)	2079-134	Project Roads Property Map.

(ii) All project works consisting principally of the following described developments:

Duncan Creek Diversion, a concrete gravity dam about 32 feet high with a crest length of 188 feet at an elevation of 5275 feet; and 11-foot horseshoe tunnel about 7880 feet long extending to the French Meadows Reservoir;

French Meadows Dam and Reservoir, a composite gravel and earthfill dam, on the Middle Fork of the American River, about 229 feet high with a crest length of about 2700 feet at an elevation of 5269 feet and would have 125,000 acre-feet of usable storage:

French Meadows-Hell Hole Tunnel, a 12-foot horseshoe tunnel 13,613 feet long connecting to a 6 foot 3 inch diameter penstock 655 feet in length extending to the French Meadows Powerhouse;

French Meadows Powerhouse, would contain a 24,000 horsepower reaction turbine connected to a 15,300 kilowatt generator; the tailrace would discharge into the Hell Hole Reservoir;

Hell Hole Reservoir, on the Rubicon River would be created by a rockfill dam about 410 feet high with a crest length of 1570 feet at an elevation of 4650 feet and would have 202,600 acre-feet of usable storage;

Hell Hole-Middle Fork Tunnel, a 13 foot 3 inch horseshoe tunnel 55,034 feet long connecting to a steel penstock about 3680 feet long varying from 9 feet to 7 feet 6 inches in diameter branching at a wye to two 66 inch pipes extending to the Middle Fork Powerhouse; the North Fork Long Canyon Diversion would have 26-foot high concrete dam with a crest length of 155 feet at elevation 4695 feet and the South Fork Long Canyon Diversion would have a 26 foot high concrete gravity dam with a crest length of 230 feet at elevation 4658 feet; each

would divert water to the Hell Hole-Middle Fork Tunnel by shafts to be located about midway of its length;

Middle Fork Powerhouse, would contain two 82,000 horsepower impulse turbines connected to two 54,900 kilowatt generators; the tailrace would discharge into the Middle Fork Interbay;

Middle Fork Interbay, on the Middle Fork of the American River to be created by a concrete gravity dam about 75 feet high with a 212 foot crest length at an elevation of 2540 feet;

Middle Fork-Ralston Tunnel, a 13 foot 3 inch horseshoe tunnel 35,326 feet long connecting to a steel penstock 1680 feet long varying in diameter from 9 foot 6 inches to 7 foot 6 inches extending to the Ralston Powerhouse;

Ralston Powerhouse, would contain one 106,000 horsepower impulse turbine connected to a 79,200 kilowatt generator; the tailrace would discharge into Ralston Afterbay;

Ralston Afterbay, on the Middle Fork of the American River would be created by a composite gravel and earthfill dam about 88 feet high, with a crest length of 525 feet long at elevation 1198 feet;

Ralston Afterbay-Oxbow Tunnel, a 16 foot horseshoe tunnel 1320 feet long connecting to an 11 foot steel penstock extending about 100 feet to the Oxbow Powerhouse;

Oxbow Powerhouse, would contain one 8700 hp Kaplan turbine connected to a 6000 kw generator, and appurtenant mechanical and electrical facilities; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the amended application and which are designated and described as follows:

EXHIBIT L

Sheet	FPC No.	Title—Middle Form American River Project
1	2079-64	Duncan Creek Diversion—Plan and Sections.
2	2079-65	Duncan Creek—Middle Fork Tunnel Plan and Profile.
3 (Rev.)	2079-135	French Meadows Dam—Plan.
4 (Rev.)	2079-136	French Meadows Dam—Sections and Details.
4A	2079-162	French Meadows Spillway Plan, Profile and Sections.
4B	2079-163	French Meadows Spillway Crest Dimensions.
8 (Rev.)	2079-138	French Meadows—Hell Hole Tunnel Plan and Profile.
9 (Rev.)	2079-139	French Meadows Power Plant—Penstock and Surge Shaft.
10 (Rev.)	2079-140	French Meadows Power Plant Plan and Sections.
12	2079-75	Hell Hole Dam—Plan.
13	2079-76	Hell Hole Dam—Sections and Details.
13A	2079-170	Hell Hole Spillway—Plan Profile and Sections.
16 (Rev.)	2079-143	Hell Hole—Middle Fork Tunnel Plan and Profile.
17 (Rev.)	2079-144	Hell Hole—Middle Fork Tunnel Intake and Surge Shaft.
18 (Rev.)	2079-145	Long Canyon Diversion—South Fork Dam and Shaft.
19 (Rev.)	2079-146	Long Canyon Diversion—North Fork Dam and Shaft.
20 (Rev.)	2079-147	Middle Fork Power Plant Penstock Plan and Profile.
21 (Rev.)	2079-148	Middle Fork Power Plant Plan and Elevations.
22 (Rev.)	2079-149	Middle Fork Power Plant Powerhouse Plans.
23	2079-86	Middle Fork Power Plant—Sections.
25	2079-88	Middle Fork—Ralston Interbay Dam Plan and Sections.
26 (Rev.)	2079-151	Middle Fork—Ralston Tunnel Plan and Profile.
27 (Rev.)	2079-152	Ralston Power Plant Penstock Plan and Profile.
28 (Rev.)	2079-153	Ralston Power Plant Plan and Elevations.
29	2079-92	Ralston Power Plant Powerhouse Plans.
30	2079-154	Ralston Power Plant—Sections.
31A (Rev.)	2079-156	Ralston Afterbay Dam—Plan and Sections.
31B (Rev.)	2079-157	Oxbow Power Plant—Plans and Sections.

Exhibit M: Comprised of five (5) pages entitled "General Description of Mechanical & Electrical Equipment."

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–2, December 15, 1953, entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Lands of the United States" (17 FPC 62), which terms and conditions are attached hereto and made a part hereof, except for Articles 10, 11, 13, 20 and 21 thereof, and subject to the following special conditions set forth herein as additional articles:

Article 25. The Licensee shall commence construction of the project works not later than July 1, 1963, shall thereafter in good faith and with due diligence prosecute such construction and shall complete construction of such works not later than December 31, 1966.

Article 26. The Licensee shall, within one year following completion of the construction of the project file with the Commission revised Exhibits F and K showing final project boundary prepared in accordance with the Commission's Rules and Regulations.

Article 27. The Licensee shall do everything reasonably within its power and shall require its employees, contractors and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the Agency concerned to prevent, make advanced preparations for suppression, and suppress fires on the lands to be occupied or used under the license. The Licensee shall be liable for and pay the cost incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the work appurtenant or accessory thereto under the license.

Article 28. The Licensee shall cooperate with the San Francisco State College in the possible survey and salvage of historical and archeological data (including relics and specimens) in the project area and shall compensate the college for the expenses incurred up to a total of $6,000, upon further order of the Commission.

Article 29. The Licensee shall, prior to impounding water, clear all lands in the bottoms and margins of: Duncan Creek Diversion, North Fork Long Canyon Diversion, South Fork Long Canyon Diversion, Middle Fork Interbay and Ralston Afterbay reservoirs up to high-water level. Licensee shall prior to impounding water, clear all lands in French Meadow Reservoir between elevation 5,120 feet (5 feet below minimum pool elevation) to high-water level and in Hell Hole Reservoir between elevation 4,335 feet (5 feet below minimum pool elevation) to high-water level. Licensee shall dispose of all temporary structures, unused timber, brush, refuse, or inflammable material resulting from the clearing of the lands or from the construction and maintenance of the project works. In addition, all trees along the margins of reservoirs which may die from operation of the reservoir shall be removed. The clearing of the lands and the disposal of the material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission.

Article 30. The Licensee shall keep the two tainter gates of the French Meadows Spillway blocked in a fully open position by November 15 of each year and the gates shall remain in that position until the following April 1, unless special permission is obtained for a specific year from the authorized representative of the Commission.

Article 31. The Licensee shall provide protective concrete at the impact and lip areas at the angled intersection of the French Meadows Spillway and its escape channels, as shown on Drawing Exhibit L, Sheet 4A (FPC No. 2079–162), if so ordered by the Commission.

Article 32. The Licensee shall construct a stilling pool and/or other types of energy dissipating devices below each cascade of the Hell Hole spillway channel in the interest of structure safety after the spillway area foundation conditions are exposed and the quality of rock is determined; also, Licensee shall incorporate into the designs of the French Meadows and Hell Hole spillway channel walls additional protective measures against erosion, if so ordered by the Commission.

Article 33. The Licensee shall construct such unit or units which will comprehensively develop the head on the river downstream from the Oxbow powerhouse when so ordered by the Commission upon its determination that such unit or units are economically feasible, after notice and opportunity for hearing.

Article 34. The Licensee shall construct, maintain and operate such protective devices and shall comply with such reasonable modifications of the project structures and operation in the interest of fish and wildlife resources, provided that such modifications shall be reasonably consistent with the primary purpose of the project, as may be prescribed hereafter by the Commission upon its own motion or upon recommendation of the Secretary of the Interior or the California Department of Fish and Game after notice and opportunity for hearing and upon a finding that such modifications are necessary and desirable and consistent with the provisions of the Act: *Provided further,* That subsequent to approval of the final design drawings prior to commencement of construction no modifications of project structures in the interest of fish and wildlife resources which involve a change in the location, height, or main structure of a dam, or the addition of or changes in outlets at or through a dam, or a major change in generating units, or a rearrangement or relocation of a powerhouse, or major changes in a spillway structure shall be required.

Article 35. Whenever the United States shall desire, in connection with the project, to construct fish handling facilities or to improve the existing fish handing facilities at its expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such fish handling facilities or such improvements thereof. In addition, after notice and opportunity for hearing the Licensee shall modify the project operation as may be prescribed by the Commissioner, consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish handling facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish handling facilities or to relieve the Licensee of any obligation under the license.

Article 36. The Licensee shall operate Duncan Creek Diversion, French Meadows, and Hell Hole Reservoirs in a manner that will permit maintenance of minimum pools according to the following schedules:

Location and forecasted runoff to Folsom Reservoir in acre-feet [1]	Minimum pool in acre-feet	
	June through September	October through May
French Meadows Reservoir		
More than 2,000,000	60,000	50,000
Less than 2,000,000 but not less than 1,200,000	60,000	25,000
Less than 1,200,000	28,000	8,700
Hell Hole Reservoir		
More than 2,000,000	70,000	50,000
Less than 2,000,000 but not less than 1,200,000	70,000	25,000
Less than 1,200,000	26,000	5,500
Duncan Creek Diversion Reservoir		
Any	Water surface elevation at 5,259 feet.	

[1] Unimpaired run-off of American River to Folsom Reservoir for current year, Oct. 1 through Sept. 30, as estimated by the California Department of Water Resources on or about Apr. 1 of each such calendar year. The estimate shall apply for the period June 1 of each such calendar year to May 31 of the succeeding calendar year. Provided that the schedules may be modified if found appropriate to improve the fishery and recreation value to the extent mutually agreeable to the Licensee, the U.S. Forest Service, the Bureau of Sport Fisheries and Wildlife, and the California Department of Fish and Game.

Article 37. The Licensee shall release from Duncan Creek Diversion Dam, French Meadows Dam, Hell Hole Dam, South Long Canyon Diversion Dam, North Long Canyon Diversion Dam, Ralston Afterbay Dam and Oxbow Powerplant, sufficient flows to meet the following schedule:

Location	Forecasted Runoff to Folsom Reservoir in acre-feet [1]	Streamflow in cubic feet per second
Duncan Creek Diversion Dam	1,000,000 or more	8, or the natural flow, whichever is less.
	Less than 1,000,000	4, or the natural flow, whichever is less.
French Meadows Dam	1,000,000 or more	8, at all times.
	Less than 1,000,000	4, at all times.
Hell Hole Dam	1,000,000 or more	20, June 1 through July 25. 15, July 26 through Aug. 5. 10, Aug. 6 through Oct. 31. 14, Nov. 1 through Jan. 31. 20, Feb. 1 through May 31.
	Less than 1,000,000	8, June 1 through Dec. 31. 6, Jan. 1 through Mar. 25. 8, Mar. 26 through May 31.
South Long Canyon Diversion Dam.	1,000,000 or more	5, or the natural flow, whichever is less.
	Less than 1,000,000	2½, or the natural flow, whichever is less.
North Long Canyon Diversion Dam.	Any forecast	2, or the natural flow, whichever is less.
Ralston or Middle Fork Interbay	1,000,000 or more	23, or the natural flow, whichever is less.
	Less than 1,000,000	12, or the natural flow, whichever is less.
Oxbow Powerplant to provide in Middle Fork of American R. below confluence with North Fork of the Middle Fork.	Any forecast	75, year-round.

[1] See footnote—article 36, *supra*.

Provided that through mutual agreement among the Licensee, the U.S. Forest Service, the Bureau of Sport Fisheries and Wildlife, and the California Department of Fish and Game, the flow schedule for French Meadows Dam and Hell Hole Dam may be altered to improve fishery and recreational values. When the forecasted run-off is 1,000,000 acre-feet or more, total releases shall not

exceed 5,800 acre-feet from French Meadows Dam nor 11,000 acre-feet from Hell Hole Dam. When the forecasted runoff is for less than 1,000,000 acre-feet, total releases shall not exceed 2,900 acre-feet from French Meadows Dam nor 5,500 acre-feet from Hell Hole Dam.

Provided further that Oxbow Powerplant releases shall not cause vertical fluctuations in stream stages (measured in representative section) greater than one foot in one hour; provided that should a cooperative study be conducted by the Licensee and the California Department of Fish and Game to determine the effect of such fluctuations, modifications of this provision may be made, if mutually agreed by those agencies.

Article 38. The Licensee shall take every precaution during the construction period to prevent unnecessary destruction of fish and wildlife habitat, including the provision and enforcement of rules and regulations pertaining to those measures to govern the action of its contractors. Wherever possible, habitat along streams shall not be disturbed. However, if streamside habitat is altered during construction, it shall be left in a condition favorable to the reestablishment of stream-side vegetation. Silts, fines, and other construction debris shall not be placed in the streams, and special care shall be taken in depositing spoil from the construction of project tunnels to avoid destruction of wildlife habitat.

Article 39. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, hydraulically and electrically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, the benefits of which shall be shared equitably by the participants in such coordination. In the event the participants cannot agree thereon, the Commission shall equitably apportion the benefits after notice and opportunity for hearing upon the Commission's own motion or upon motion of any party.

Article 40. The Licensee shall install additional capacity and make other changes in the project as directed by the Commission, to the extent it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 41. The Licensee shall pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part 11 of the Commission's regulations, in effect from time to time. The authorized installed capacity for such purposes is 280,000 horsepower.

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, an amount to be determined hereafter by the Commission.

Article 42. The Licensee shall, within one year from the effective date of this license, file with the Commission a recreational use plan for the project which shall include not only recreational improvements which may be provided by others, but the recreational improvements the Licensee plans to provide.

(C) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

OPINION NO. 380

PENNSYLVANIA POWER & LIGHT COMPANY, PROJECT NO. 2268

OPINION AND ORDER DENYING APPLICATION FOR NEW 50-YEAR LICENSE

(Issued March 13, 1963)*

Syllabus

1. Limitation of 50 years placed upon license period is one of most explicit provisions of the Federal Power Act. P. 469.
2. Reviewing legislative history of the Act, Commission *states* there is serious doubt as to propriety of issuing new license where in form an old license is surrendered, but in substance existing license would be extended beyond 50 years—in effect, denying Congress possible recapture at end of 50 years. P. 470.
3. Where changes in over-all project works are relatively minor and basic structure remains as originally licensed, such changes are not sufficient to make it a "new" project, even if this fact were to be determinative. P. 471.
4. In proceeding arising under Section 4(e) of The Federal Power Act, Commission *denies* application for new 50-year license, without prejudice to submission of proposed amendment to existing license. P. 472.

Randall J. LeBoeuf, Jr., For Pennsylvania Power & Light Company.

Thomas M. Debevoise and *Joseph B. Hobbs*, For Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Charles R. Ross.

O'CONNOR, *Commissioner:*

Pennsylvania Power & Light Company (PP&L) on July 31, 1959 filed application, designated Project 2268, requesting a new license for existing project works already under license at its Holtwood project (Project No. 1881) and for certain changes, including additions, thereto. The Holtwood project is located on the Susquehanna River in Pennsylvania about 40 miles downstream from Harrisburg, between the larger Conowingo (Project No. 405) development downstream and the larger Safe Harbor (Project No. 1025) upstream. PP&L proposes to modify certain of the existing project works and to add a new 18,000 kilowatt generating unit "provided a new license for the project is issued for a term of 50 years from the date of issuance of the new license on terms acceptable to Applicant."

The Commission asserted jurisdiction over the Holtwood project in November 1939, and its order requiring a license was affirmed in 1941. *Pennsylvania Water and Power Co.* v. *F.P.C.*, 123 F. 2d 155 (D.C. Cir., 1941) *certiorari* denied 315 U.S. 806. A license for the Holtwood project works, Project No. 1881, was issued in July of 1951, 10 FPC 1162, modified 10 FPC 1368. By its terms the license became effective as of January 1, 1938 and expires on June 30, 1970. PP&L became the licensee of Project No. 1881 in 1955 by merger and Commission approval of the license transfer.

The existing project works of the Holtwood project consist principally of a concrete gravity overflow dam 2,392 feet long and about 55 feet high with a fishway and log chute. The crest of the dam is presently at elevation 165 feet with the effective height of the dam being increased 4¾ feet by flashboards to elevation 169¾ feet, creating a pool extending upstream about 8 miles to the tailwater of the Safe Water Harbor project. A powerhouse integral with the

*Rehearing denied by order issued June 25, 1963, 29 FPC 1294.

dam contains ten main generating units having an aggregate turbine capacity of 158,000 horsepower and generator capacity of 108,800 kilowatts. In addition to the ten main generating units there are two turbine driven exciter units and two 5,000 kva frequency converters. A 25 cycle substation is located within the main structure, and a 60 cycle substation is adjacent to the powerhouse.

In its application (pp. 2, 6–8), PP&L states that the proposed reconstruction will consist of replacing the existing 4¾ foot flashboards with 7 foot flashboards, widening and deepening the tailrace, installing a new 18,000 kilowatt additional generating unit and installing a 48 foot by 35 foot floodgate.

The proposed new construction would increase the head at the Holtwood project by about 8 feet. The present effective capacity of the Holtwood project is 100,000 kw, which would be increased to a net of 140,000 kw after deducting the related 4,000 kw reduction at Safe Harbor. The average annual energy output at Holtwood would increase from a present average output of 585,000,000 kwh to 786,000,000 kwh, about 20,000,000 of which would be used to replace energy lost at the upstream Safe Harbor project.

Using January 1, 1959 price levels, the capital cost of the proposed project changes is estimated at $9,000,000. The estimated average annual cost of the proposed changes in the Holtwood project is $1,304,000 and the estimated average annual cost of alternate steam-electric power is $1,811,000. Thus, the average cost of alternate steam-electric power would exceed the cost of the average additional net power production due to the proposed changes in the Holtwood project by about one-half million dollars ($507,000) annually.

Briefly, PP&L proposes to surrender formally its existing license for Holtwood which terminates in 1970 and to obtain a new 50-year license covering the existing Holtwood project works together with the planned additions. In substance this amounts to a request to extend the existing license to the year 2013. It would mean that the existing portions of the Holtwood project would have been effectively under license from 1938 to 2013, a period of 75 years, without opportunity being afforded the Government to recapture or consider recapture of the project as provided by the Federal Power Act in Section 14 "upon or after the expiration of any license", which according to Section 6 "shall be issued for a period not exceeding 50 years."

The applicant urges that the Commission has legal authority under the Act to issue such a new license, on the argument that the proposed construction is of sufficient magnitude to constitute a "new" project. Applicant further urges that as a matter of policy there is "good public reason" for the Commission to issue such a license in view of the increased and more effective use of the natural resource that would result, and since applicant would be unwilling to proceed with this development in the absence of a new 50-year license.

The limitation of fifty years placed upon the license period is one of the most explicit provisions of the Federal Power Act as revealed both by the express provisions of the statute, in Sections 6, 10(i), 14 and 15, and by a long and specific legislative history.

The General Dam Act of 1906 (34 Stat. 386) placed no time limitation on the duration of its grants. However, President Theodore Roosevelt in vetoing several Congressional authorizations for dams[1] stated a number of conditions which he considered basic to the public treatment of such natural resources, including that there be no grants in perpetuity and that "Provisions should be made for the termination of the grant or privilege at a definite time, leaving to future

[1] See Sen. Doc. No. 438, 60th Cong., 1st Sess.; House Doc. 1350, 60th Cong., 2d Sess.

generations the power or authority to renew or extend the concession in accordance with the conditions which may prevail at that time".[2]

In response, the General Dam Act of 1910 (36 Stat. 593) limited authorization to not more than 50 years but reserved the right to revoke at any time. This proved unsatisfactory and accordingly new legislation was sought, which eventually became the Federal Water Power Act of 1920. This, with but minor amendment, so far as concerns the provisions involved here,[3] became part of the Federal Power Act in 1935.

During the many years when the legislation which finally became the Federal Water Power Act was before the Congress, every major bill proposed contained an express provision for a license to be terminated upon the expiration of no more than a fifty-year period.[4] In fact the 50-year provision was a focal point of the compromise between the conservationists and their opponents which finally resulted in the 1920 Act.[5] Briefly, the conservationists were concerned lest there be an indefinite private grant of public resources and considered 50 years, with the possibility of renewal, too long. Others considered a provision for recapture after 50 years too restrictive, and sought either an indefinite term, or such limitation on recapture after 50 years as to achieve that in practice.

There are a great many references during the Congressional debates extending through the period from 1914 to 1920, to the 50-year expiration term and its significance.[6] There are very few specific statutory provisions which have had more explicit Congressional attention focused upon them, and over a longer period. As a minimum, this long history emphasizes the intention that a license expire at the end of no more than 50 years, rather than becoming an indefinite or perpetual license, or one renewable by the Commission before Congress could have the opportunity of recapture. Running through all this was a clear insistence that the 50-year expiration period be a real, and not nominal, limitation at the end of which the Congress might re-examine the use of the particular natural resource. Once the provisions for expiration of the term after 50 years, for recapture, etc., were finally incorporated into the 1920 Act, the controversy was decided. They were re-enacted in 1935 without significant amendment or debate.[7]

In view of this history, there is serious doubt as to the propriety of issuing a new license where in form and old license is surrendered but in substance the existing license would be extended beyond 50 years. The practical effect would be to deny Congress the opportunity to consider possible recapture at the end of 50 years. Such action by the Commission would risk a conflict with both the letter and the intent of the Act. This conclusion is strengthened by such portions of the Power Act as Section 10(i), which provides that various requirements of the Act may be waived in connection with minor projects but expressly excepts the requirement that the license period be not more than 50 years.

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[2] Rainy River veto message, Sen. Doc. No. 438, *supra*.

[3] H. Rpt. No. 1318, 74th Cong., 1st Sess., page 7.

[4] Thus, for example, H.R. 14893 and H.R. 16673, 63d Cong., 2d Sess. (1914); H.R. 16053, 63d Cong., 2d Sess. (1914); S. 6413, 63d Cong., 3d Sess. (1914); H.R. 408, 64th Cong., 1st Sess. (1916); S. 3331, 64th Cong., 1st Sess. (1916); H.R. 8716, 64th Cong., 1st Sess. (1916); S. 1419, 65th Cong., 2d Sess. (1917); H.R. 3184, 66th Cong., 1st Sess. (1919).

[5] 56 Cong'l Record, 65th Cong., 2d Sess., pages 9282 and 9302–3.

[6] Volumes 56, 58 and 59 of the Congressional Record are replete with these instances. See also H. Rept. No. 715, 65th Cong., 2d Sess.

[7] H. Rept. No. 1318, *supra*, note 3; 79 Congressional Record 8757–58, 8773, 8945–6, 9053–55, 10312–15, 10377–79, 10567–69, 10634, 10827–30, 10839, 11095 (May to July, 1935).

If there are circumstances under which it would be proper for this Commission to extend existing licenses prior to their expiration date by including their project works in a new 50-year license, they would have to involve factual situations markedly different from those presented here. Although the new construction proposed by PP&L may substantially increase the present effective capacity and annual energy output of the Holtwood project, the changes in the overall project works are relatively minor, and the basic structure will remain as originally licensed. These additions clearly do not suffice to make it a "new" project, even if that fact were to be viewed as determinative.[8]

The present application does not find support in those situations where a new 50-year license has been granted to cover both existing project works which were not already licensed and new project works (*e.g., Carolina Alumnium Co.*, 19 FPC 704 (1958)). The combined period during which an existing project "should" have been under license, and when it is actually under license, may exceed 50 years in such instances. However, these cases usually present a legitimate argument over jurisdiction and as to when the project "should" have been licensed. Therefore, they do not include the additional element present here of permitting a clearly jurisdictional project work to be formally under license for a period of more than 50 years. In any event, the explicit legislative history noted above and our recent determination to deal more strictly with owners of unlicensed jurisdictional projects[9] make clear that this line of cases cannot be extended nor serve as controlling precedent in the instant proceeding.

Two 1955 opinions, *Pacific Gas & Electric*, 14 FPC 518, *Pacific Gas & Electric*, 14 FPC 556, are also relied upon by PP&L. We recognize that in these cases the Commission took action which could be construed as supporting the instant proposal in that new 50-year licenses were issued incorporating older licensed project works.[10] But the opinions in those cases did not address themselves to the Congressional purpose as to the term of licenses, and in at least two later cases the Commission has expressly refused to follow these precedents. See *Alabama Power Co.*, 18 FPC 257, 263 (1957) and *Georgia Power Co.*, 21 FPC 296, 300–301 (1959). We adhere to the more recent decisions for the reasons set forth above.

The Commission finds:

(1) It would not be in the public interest to accept the surrender of the existing license for Holtwood Project No. 1881 and issue in its place a new 50-year license covering the present Holtwood Project together with proposed changes and additions.

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[8] As an example of difficulties presented by the argument that the presence of a "new" project justifies a new license, consider the situation where after 49 years under license the licensee proposes to double the existing works, or to tear down the project works and rebuild a completely new and expanded project, and applies for a new 50-year license on the grounds that it is a "new" project. It is not easy to reconcile this with the strictures of the Act against a perpetual private grant.

[9] Opinion No. 357, *Public Service Co. of New Hampshire*, Project No. 2288 (April 25, 1962), 27 FPC 830.

[10] In *Pacific Gas & Electric Co.*, 14 FPC 518, a minor part license (in which recapture had been waived) and a major part license were merged which two new associated proposals for separate developments on the same river, with the package receiving a new 50-year license. By this action the minor part project works (which was for a substantial development) was for the first time made subject to recapture as well as the other provisions of the Act which had previously been waived. In the other case, *Pacific Gas & Electric Co.*, 14 FPC 556, a minor part license and an associated major part license were given a new joint license, having the effect of extending the life of the two projects for 12 and 14 years respectively and making the minor part license subject to recapture, in order to have the licenses run concurrently with licenses being issued to an irrigation district for project works on the same river with which they were to be electrically and financially integrated.

(2) It would be in the public interest to permit an amendment of the existing license for Holtwood Project No. 1881 to permit the proposed changes and additions.

The Commission orders:

Applicant's request for a new 50-year license covering the present Holtwood Project No. 1881 together with proposed changes and additions is denied, without prejudice to the submission of a proposed amendment to the existing license to cover the proposed construction.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

SHELL OIL COMPANY, DOCKET NO. G–17560; PERRY R. BASS (OPERATOR), ET AL., FORMERLY SID W. RICHARDSON D/B/A RICHARDSON & BASS (OPERATOR), ET AL., DOCKET NO. G–17399

ORDER CONDITIONALLY APPROVING OFFERS OF SETTLEMENT AND REISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 13, 1963)

Offers of settlement of the issues in these South Louisiana certificate proceedings have been filed by Shell Oil Company (on December 21, 1962) and Perry R. Bass (on December 26, 1962). These proceedings were severed by notice issued January 7, 1963 from those in Placid Oil Company, *et al.*, Docket No. G–13183, *et al.*

These proceedings were remanded to us as a result of judicial review of a certificate order issued August 10, 1959. *Texas Gas Transmission Corp.* 22 FPC 378, reversed, *Public Service Commission of N.Y.* v. *F.P.C.*, 287 F. 2d 146 (CADC). The sales in question are made to Hope Natural Gas Company under Bass' Rate Schedule No. 5 and Shell's Rate Schedule No. 215.

In general, the proposals follow the pattern approved in *Texaco Inc.*, 28 FPC 247 (order issued July 30, 1962 in Docket No. G–13169 *et al.*) and should be approved subject to the conditions prescribed below. No party has opposed these settlement proposals or waiver of the intermediate procedure in these proceedings.

Each if the settlement offers provides for a tolling of interest on the refunds as of some spscified date (ranging from July 1, 1962, to December 31, 1962). In *Texaco Inc., supra*, we did sanction a tolling of interest; but the settlement proposals there approved were filled within a matter of days of the tolling date there proposed. In *Continental Oil Company*, 28 FPC 1090, (order issued December 21, 1962, in Docket No. G–11024 *et al.*) we required that interest continue to accrue until the date of actual refund; but in that case we were approving a settlement proposal filed after our final order had been issued. Here we believe it equitable to permit a tolling of interest, and to prescribe that interest shall continue to accrue until the last day of the month on which the settlement offer was filed.

The Commission further finds:

(1) Shell Oil Company and Perry R. Bass (Operator), *et al.*, are natural-gas companies within the meaning of the Natural Gas Act, as heretofore found, and are engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The sales of natural gas proposed by the applications, as amended, are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sales proposed by applicants in the above-captioned dockets, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below effective as of the date of initial delivery.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

The Commission further orders:

(A) The intermediate decision procedure is waived in these proceedings.

(B) Certificates of public convenience and necessity are hereby re-issued upon the conditions set forth herein, to applicants, effective as of the dates of initial delivery, for the sale of natural gas in interstate commerce for resale as proposed, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the applications.

(C) The certificates issued by paragraph (B), above, are granted upon the express condition that applicants fully comply with the terms of the offers of settlement, which are expressly approved; *provided, however*, that interest on all principal amounts to be refunded shall continue to accrue through December 31, 1962.

(D) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposals, applicants shall report to the Commission, in writing and under oath, the amount of the refunds made to their purchaser, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with releases from purchaser showing receipt of the refunds in conformity to the settlement as approved.

(E) Upon full compliance of applicants with all the terms of this order and of the settlement proposals, applicants shall be relieved of any further refund obligations in these proceedings and said proceedings shall terminate.

(F) The certificates herein issued are not transferable and shall be effective only so long as the applicant continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(G) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Regulations thereunder; *provided, however*, that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(H) The grant of certificates herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter insti-

tuted by or against applicants, particularly any proceeding under Section 5 of the Natural Gas Act, and is without prejudice to claims or contentions which may be made by the Commission, applicant, the Commission staff, or any affected party herein in any other proceeding.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, and L. J. O'Connor, Jr.

JERSEY CENTRAL POWER & LIGHT COMPANY, PROJECT NO. 2309 AND DOCKET NO. E-7005

ORDER ISSUING LICENSE (MAJOR) AND PERMITTING WITHDRAWAL OF DECLARATION OF INTENTION

(Issued March 14, 1963)

Application was filed on March 13, 1962, and amended on August 1 and December 13, 1962, by Jersey Central Power & Light Company (Applicant) of Morristown, New Jersey, for a license under Section 4(e) of the Federal Power Act (Act) for a proposed project, known as the Yards Creek Pumped Storage Project, and designated as Project No. 2309, to be located on Yards Creek, a tributary of Paulins Kill, which is a tributary of the Delaware River, in Warren County, New Jersey, in the vicinity of Pahaquarry and Blairstown Townships.

On July 25, 1961, as supplemented on September 25, 1961, Applicant filed a declaration of intention under Section 23(b) of the Act to construct the Yards Creek Project (Docket No. E-7005). On December 13, 1962, Applicant filed a request to withdraw its declaration of intention, and we are hereinafter permitting such withdrawal.

The Secretary of the Army and the Chief of Engineers, in reporting on the application advised that the plans of the project structures affecting navigation had been approved pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, recommended, for inclusion in any license issued for the project, certain conditions in the intrests of recreation, fish and wildlife.

The Delaware River Basin Commission has advised that it has approved the Yards Creek project and offers no objection to issuance of a license for the project.

The Commission finds:

(1) The output of the proposed Yards Creek project will be fed into the interstate network and will flow into New Jersey, Pennsylvania, and possibly New York when operated during the peak load hours during all seasons of the year. During off-peak times, when the proposed Yards Creek project is pumping into storage, power will be utilized from Pennsylvania, New Jersey, and possibly New York.

(2) The proposed Yards Creek Pumped Storage Project will constitute the initial phase of the ultimate plan of development which would be located in and along the Delaware River, a navigable water of the United States within the meaning of Section 3(8) of the Act.

(3) Public notice of the filing of the application was given as required by the Act. No protests were received. There are no conflicting applications before the Commission.

(4) Applicant is a corporation organized under the laws of the State of New Jersey and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license for the project.

(5) The issuance of a license as hereinafter provided will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(6) The proposed project is best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, under the terms and conditions hereinafter imposed.

(7) The step-up transformers and switch gear and the short 230 kv transmission line mentioned in subparagraph (ii) of paragraph (C) below are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(8) The installed horsepower capacity of the proposed project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charges is 450,000 horsepower.

(9) The energy to be generated by the proposed project would be distributed and sold by Applicant for public utility purposes.

(10) The amount of annual charges to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(11) In accordance with Section 10(d) of the Act, the specified rate of return upon the net investment in the project, and the proportion of surplus earnings to be paid into and held in amortization reserves are reasonable as hereinafter provided.

(12) The exhibits designated and described in paragraph (C) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) Permission is hereby granted Applicant to withdraw its pending aforementioned declaration of intention to construct the Yards Creek Project, in Docket No. E–7005.

(B) This license is hereby issued to Jersey Central Power & Light Company (Licensee) under Section 4 (e) of the Federal Power Act for a period of 50 years, effective as of March 1, 1963, for the construction, operation and maintenance of the Yards Creek Project No. 2309 to be located on Yards Creek, tributary of Paulins Kill, which is a tributary of the Delaware River, a navigable water of the United States, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(C) Project No. 2309 consists of:

(i) All lands constituting the project area and inclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2309–1) General Map; and

Exhibit K: (FPC No. 2309–2) Plan of Project

(ii) Project works consisting of:

Lower Reservoir, created by a main earth dam located 3¾ miles upstream from the mouth of Yards Creek, an earth saddle dam and a concrete uncontrolled

spillway; the reservoir will have a maximum water surface of 818.5 feet, a surface area of 300 acres and usable power storage of 4,650 acre-feet; outlet works under the main dam;

Auxiliary Reservoir, created by a low earth dam located on a small tributary of Yards Creek, an excavated spillway having a concrete sill and the dam provided with outlet works; the reservoir will have 480 acre-feet of seasonal storage to be released into the Lower Reservoir as needed;

Upper Reservoir, created by a main earth dam located across an intermittent tributary of Yards Creek near the top of Kittatinny Mountain and earth dikes following the limits of the watershed of the tributary; the reservoir will have a maximum water surface of about 164 acres at elevation 1,555 feet and usable capacity of 4,650 acre-feet; a water passage between the Upper and Lower Reservoirs comprised of an intake channel, a pressure tunnel and a penstock; a powerhouse containing three reversible pump-turbines, each having a rated capacity of 150,500 horsepower when generating and 186,000 horsepower when pumping and connected to a 112,500-kilowatt generator (125,000 kva @ 0.90 P.F.); step-up transformers and switchgear; a short 230 kv transmission line to applicant's Kittatinny Substation (non-project); and appurtenant electrical and mechanical facilities; the location, nature and character of which are more specifically shown by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: General Design Drawings

FPC No.	Sheet No.	Description
2309-3	1 of 12	Upper reservoir, dam and dikes plan, sections and stability diagrams.
2309-4	2 of 12	Lower reservoir, dam and dikes plan, sections.
2309-15	2A of 12	Lower dam spillway plans and sections.
2309-16	2B of 12	Lower reservoir, outlet structure plan and sections.
2309-6	4 of 12	Tunnel and penstock plan, profile and sections.
2309-7	5 of 12	Powerhouse, plans.
2309-8	6 of 12	Powerhouse, cross sections.
2309-13	11 of 12	Auxiliary reservoir, plans and sections .

Exhibit M: One typewritten page, filed in the Commission March 13, 1962.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(D) This license is also subject to the terms and conditions set forth in Form L-4, December 15, 1953, entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters of the United States" (16 FPC 1284), which terms and conditions, designated as Articles 1 through 18, are attached hereto and made a part hereof, except for Articles 7, 8, 10, 11 and 12 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 19. The Licensee shall pay to the United States the following annual charge: For the purpose of reimbursing the United States for the costs of administration of Part I of the Act one (1) cent per horsepower on the authorized installed capacity (450,000 horsepower) plus two and one-half (2½) cents per 1,000 kilowatt-hours of gross energy generated during the calendar year for

which the charge is made; or such other amounts as may hereafter be determined as necessary to reimburse the United States for the costs of administration.

Article 20. The Licensee shall commence construction of the project works within one year from the effective date of this license, shall thereafter in good faith and with due diligence prosecute such construction, and shall complete construction of such project works not later than four years from the effective date of this license.

Article 21. The Licensee shall, within one year from the date of completion of the project, file for Commission approval Exhibits F and K prepared in accordance with the Commission's rules and regulations.

Article 22. The Licensee shall prior to flooding, clear all lands in the bottom and along the margins of all reservoirs up to high water level, and shall dispose of all temporary structures, unused timber, brush, refuse, or inflammable material resulting from the clearing of the lands or from the construction and maintenance of the project works. In addition, all trees along the margins of the reservoirs which may die during the operation of the project shall be removed. The clearing of the lands and the disposal of the material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission.

Article 23. The Licensee shall install additional capacity and make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 24. The Licensee, shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, the benefits of which shall be shared equitably by the participants in such coordination.

Article 25. The Licensee shall cooperate with the National Park Service and make every reasonable effort to protect the scenic and recreational values of the Tocks Island National Recreation Area, if and when authorized, as recommended by the U.S. Corps of Engineers, and the Department of the Interior.

Article 26. The Licensee shall, within one year from the effective date of this license, file with the Commission a recreational use plan for the project which shall include not only recreational improvements which may be provided by others, but the recreational improvements the Licensee plans to provide.

Article 27. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 28. The Licensee shall construct, maintain, and operate such protective devices and shall comply with such reasonable modifications of the project structures and operation in the interest of fish and wildlife resources, provided that such modifications shall be reasonably consistent with the primary purpose of the project, as may be prescribed hereafter by the Commission upon its own motion or upon recommendation of the Secretary of the Interior or the New Jersey Division of Fish and Game after notice and opportunity for hearing and upon a finding that such modifications are necessary and desirable and consistent with the provisions of the Act: *Provided further*, That subsequent to approval of the final design drawings prior to commencement of construction no modifications of project structures in the interest of fish and wildlife resources which involve a change in the location, height, or main structure of a dam, or the addition of or changes in outlets at or through a dam, or a major change in generating units, or a rearrangement or relocation of a powerhouse, or major changes in a spillway structure shall be required.

Article 29. Whenever the United States shall desire, in connection with the project, to construct fish handling facilities or to improve the existing fish handling facilities at its expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such as Licensee's lands and interests in lands, reservoirs, waterways, and project works as may be reasonably required to complete such fish handling facilities or such improvements thereof. In addition, after notice and opportunity for hearing the Licensee shall modify the project operation as may be prescribed by the Commission, consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish handling facilities constructed or improved by the United States under the provision of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish handling facilities or to relieve the Licensee of any obligation under this license.

Article 30. The Commission reserves the right to determine at a later date what additional transmission facilities, if any, shall be included in this license as part of the project works.

(E) The exhibits designated and described in paragraph (C) above are hereby approved as part of this license.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

OPINION NO. 381

PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 2082

OPINION AND ORDER ON PETITION TO REQUIRE LICENSEE TO CONSTRUCT, OPERATE, AND MAINTAIN A FISH HATCHERY, AMENDING LICENSE, AND DIRECTING REVISED FILINGS

(Issued March 14, 1963)*

Syllabus

1. Commission *requires* Licensee to construct fish hatchery at its Iron Gate Dam to compensate for spawning areas rendered inaccessible by dam's construction. P. 482.

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* Initial decision appears on p. 487. Opinion 381–A, issued August 19, 1963, 30 FPC 499. Affirmed in part, remanded in part, *Pacific Power & Light Co.* v. *F.P.C.*, 333 F. 2d 689 (CA9–1964); petition for *certiorari* filed November 2, 1964.

2. Since Licensee has created situation necessitating fish hatchery it is reasonable that it pay cost of construction thereof and substantial portion of operation and maintenance costs. P. 484.
3. Commission *rejects*, as immaterial, argument that Licensee should not be required to pay costs [Note 2, *supra*] on basis of State statutes, since Federal Government in enacting Federal Power Act has occupied entire field of licensing power projects on navigable waters to exclusion of concomitant state jurisdiction. P. 484.
4. Equitable division of costs will be achieved if yearly operation and maintenance costs are assessed 80 percent against Licensee, with California Department of Fish and Game assuming balance. P. 485.
5. Commission retains continuing jurisdiction to settle possible disputes over determination of proper annual amounts to be charged Licensee by State. P. 485.
6. Commission *amends* license to *require* construction of fish hatchery. P. 486.

Gregory A. Harrison and *John E. Sparks*, for the Pacific Power & Light Company.

Ralph W. Scott, for the Attorney General, State of California.

William J. Costello and *Daniel Slater*, for the Department of the Interior, Bureau of Sports, Fisheries & Wildlife.

Ford B. Ford, for California Senate Fact Finding Committee on Natural Resources.

Joseph B. Hobbs and *Daniel Goldstein*, for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

WOODWARD, *Commissioner:*

This proceeding arose before the Commission on a petition filed August 21, 1961, by the State of California, acting by and through its Department of Fish and Game (Department), requesting that the Commission require Pacific Power & Light Company (Licensee), licensee for Project No. 2082,[1] to erect and maintain a fish hatchery and appurtenant facilities, pursuant to Article 49 of the license, to continue the normal runs of salmon and steelhead trout which have been displaced by Licensee's construction of its Iron Gate Development on the Klamath River in northern California. Licensee answered the petition on September 13, 1961, by denying the need for a hatchery or other fishery facilities for the purpose stated, or that it should be required to construct or maintain such facilities. Pursuant to order of the Commission, a hearing was held in San Francisco, California during June 1962. The parties' arguments were consistent with their pleadings, the Department presenting testimony of fish biologists regarding the present and anticipated deleterious effects of the Iron Gate Development to support its contention that the hatchery is vital to the preservation of the fishery resource, while Licensee claimed that the evidence as so presented and as contradicted by testimony of its own biologist fails to establish that the existing resource will not adequately be maintained without the hatchery. The staff of the Commission adopted a position supporting the

[1] By orders issued June 16, 1961, 25 FPC 1154, 1156, the Commission approved a merger between Licensee and The California Oregon Power Company (COPCO), Licensee being the surviving corporation. Pacific Power & Light Company is subject to all conditions of the licenses previously issued to COPCO, which includes Project No. 2082. The license for the project expires February 28, 2006.

need for the hatchery and its construction by Licensee but proposed that the Department and Licensee share equally in the costs of operation and maintenance.

On November 14, 1962, the presiding examiner issued his initial, or recommended, decision (*infra*) in which he determined that Licensee should be required to construct a fish hatchery facility at its expense to replace the natural spawning grounds eliminated by Iron Gate Dam, but that the cost of operation and maintenance of the hatchery and of the other appurtenant facilities thereafter should be borne by the State of California. Exceptions to the decision have been filed by each of the three parties, *i.e.*, Licensee, the Department, and the Commission's staff,[2] and oral argument was held before the Commission on January 24, 1963, at the Department's request Pursuant to leave granted at the conclusion of the oral argument, Licensee and the Department have submitted comments on statements of fact made by opposing counsel, which memoranda have been considered by the Commission.

In order to place the proceeding in its proper context, a brief recitation of the underlying factual background is desirable. As noted in the examiner's decision, the present controversy is the latest episode in a protracted dispute between the Department and Licensee dating from 1918 and 1925 when the two hydroelectric plants known as Copco No. 1 and Copco No. 2 were constructed on the Klamath River in California a few miles below the Oregon border.[3] These dams were too high to permit fish migrations and Licensee therefore constructed a hatchery a short distance below the dams on Fall Creek, a tributary of the Klamath River, conveying the facility to the State in 1919. In 1925 fish trapping facilities and an egg collecting station were constructed and similarly conveyed to the State. The Fall Creek hatchery was operated and maintained until 1948 when it was discontinued as uneconomical. Use of the trapping and egg collecting facilities was continued until the construction of the Iron Gate Development, which includes new facilities for these purposes.

Operation of the existing hydroelectric plants as peak-loaded facilities with alternate storage and release of large volumes of water produced severe changes in the downstream river level and eventually led to the filing of a suit by the State of California in 1950 to enjoin the abnormal fluctuations as a continuing public nuisance. Following a course of extended but inconclusive litigation, Licensee filed an application in January 1957 for amendment of the license to authorize construction of the Iron Gate Development, approximately eight miles below Copco No. 2, the primary purpose being to even out the flows below the Copco plants. On July 27, 1958, Licensee and the Department entered into an agreement under which the Department withdrew its informal objections to the proposed Iron Gate Development and acknowledged that the construction thereof would serve to reregulate the flow of the Klamath River in a manner satisfactory to the State. Licensee agreed that it would construct the permanent fish trapping and egg collecting facilities which are now a part of the development. The necessity for the construction of a fish hatchery at Iron Gate expressly was preserved for future determination, Article 6(b) of the agreement providing" * * * that the right is reserved to all parties hereto to be heard in any future proceedings in regard to fishery facilities, other than the fish trapping and egg-collecting facilities . . ." The agreement was made a part of the record in the 1959 proceeding and was relied on by the examiner in denying a finding proposed by the

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[2] Representatives of the Department of the Interior and the California Senate Fact Finding Committee on Natural Resources were present at the hearing but did not enter formal appearances nor did they participate therein.

[3] The Klamath River in California and Oregon was held to be a navigable water in the United States in *The California Oregon Power Company*, 13 FPC 1, 12.

Department implying a determination that the hatchery was to be constructed as a condition of the license.[4] No exceptions were filed to the examiner's approval of the application for construction of the Iron Gate Development and, on January 13, 1960, the decision was adopted by order of the Commission.[5]

On March 27, 1961, the Commission, pursuant to application of Licensee, issued an order further amending the license to authorize certain requested changes in design and in the timing of construction.[6] Articles 49 and 50, as presently constituted,[7] were included in the license at that time. These Articles provide as follows:

Article 49. The Licensee shall construct, maintain, and operate or shall arrange for the construction, maintenance, and operation of artificial propagation facilities and such other permanent fish facilities and protective devices including, but not limited to, fish hauling trucks, fish screens or ladders, and comply with such reasonable modifications in project structures and operation in the interest of fish life as may be prescribed hereafter by the Commission upon the recommendation of the Secretary of the Interior and the California Department of Fish and Game, after notice and opportunity for hearing.

Article 50. The Licensee shall construct, concurrently with the construction of Iron Gate Dam, and thereafter operate and maintain permanent fish trapping, collecting, holding, and spawn-taking facilities and appurtenances at or near and downstream from Iron Gate Dam as may be prescribed hereafter by the Commission upon the recommendation of the Secretary of the Interior and the California Department of Fish and Game, after notice and opportunity for hearing.

Construction of the Iron Gate Development, including the fish trapping and egg collecting station, was undertaken in February 1960 and completed in January 1962 at a claimed cost of approximately 8.4 million dollars. In conformity with the license, an 18,000-kilowatt generator connected to a 25,000-horsepower turbine has been installed and is in operation.

One of the issues under dispute in the hearing involved the size of the hatchery as proposed by the Department. At the examiner's request a meeting was held between Licensee and the Department after conclusion of the hearing at which the parties signed a stipulation agreeing to the specifications of the hatchery facilities which would be built if required by the Commission. The stipulation, filed August 17, 1962, is without prejudice to Licensee's position that there is no need for a hatchery and that, if a hatchery is found to be required, it is not liable for the costs associated with the construction, operation, or maintenance thereof. Construction of the fishery facilities as originally proposed by the Department in 1961 was estimated to cost $1,003,020. Although no computations have been made as to the cost of the stipulated facilities, the fact that the total weight of fish to be produced has been lowered in the stipulation from 121,500 pounds to 50,000 pounds per year indicates that the cost of construction will be substantially less than the million dollar figure. The staff has estimated that annual operating and maintenance costs will be reduced from $95,256 which would have been needed to run the proposed facility to approximately $54,278 for those stipulated in the agreement.

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[4] 23 FPC 61, 68.

[5] *The California Oregon Power Company*, 23 FPC 59.

[6] *Ibid.*, 25 FPC 579.

[7] Analogous provisions were contained as Articles 42 and 43 in the 1960 license amendment, accepted by the Licensee on January 26, 1960. Article 43, which was similar to present Article 49, was incorporated after consultation with the U.S. Fish and Wildlife Service and the Department, and in line with a modification suggested by Licensee in a letter to the Commission filed September 9, 1957. The March 1961 amendments were accepted by the Licensee on April 10, 1961.

Upon our consideration of the record and the oral arguments presented by counsel, we are of the opinion that the Licensee properly should be required to construct a hatchery of the capacity provided in the stipulation to compensate for the spawning areas which have been rendered inaccessible by the dam's construction. The costs of operation and maintenance of the fish facilities, however, should not, we believe, be assessed wholly against the Licensee. Instead, and assuming that the Department will be the operating agency, we shall direct Licensee to reimburse the Department for 80 percent of the annual expenses incurred in the operation and maintenance.

There is no question that the Commission has the power to require construction of the requested facilities by the Licensee. The question of jurisdiction over Project No. 2082 was considered in the original *California Oregon Power Company* case, 13 FPC 1,[8] and was determined to vest in the Commission generally under Part I of the Federal Power Act on the ground of navigability of the Klamath River. In addition, the Commission found that the project would utilize surplus water from the Link River Dam, a "Government dam" within the definition of Section 3(10) of the Act, and therefore was subject to our licensing authority under Section 4(e). Inclusion of the Iron Gate Development with the previously constructed developments was affirmed by the Commission in its January 1960 order. It is clear that the Commission may require the construction, maintenance, and operation of fishways by a licensee. Section 10(a) of the Act requires the Commission, before issuing a license for hydroelectric development, to find that the project shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan of development of the water resources for power and all other beneficial public uses. This provision has been interpreted to embrace the conservation, preservation, and enhancement of anadromous fish resources, and the Commission, on a number of occasions, has directed the inclusion of fish facilities in licensed projects where appropriate.[9] Licensee has conceded that the Commission has the power and obligation in the present proceeding" . . . to take such measures as are reasonably necessary to preserve fish and wildlife."

The factual evidence presented by the Department is amply covered in the examiner's decision and need not be repeated herein. Although Licensee maintained that the Department has not established the need for a hatchery at Iron Gate, and questioned the accuracy of the Department's estimates as to the number of fish formerly spawning above the site of the Development, it admitted that some spawning and rearing areas have been eliminated by the Dam's construction. Licensee argued, however, that normal runs will be sustained by the spawning grounds located below Iron Gate. The examiner concluded that while the Department's estimate that 57.1 percent of the fish runs at Klamathon Racks spawned above the Iron Gate site was open to question, the estimates were the best available and do support the necessity for additional fishery facilities at Iron Gate to replace the natural hatching and incubation process that would normally have occurred in the lost spawning areas. He also found no apparent evidence in the record to support Licensee's assertion that the fish would turn back on reaching the Dam and spawn downstream.

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[8] Opinion No. 266, 13 FPC 1, rehearing denied March 29, 1954, supplemental Opinion No. 266–A, 15 FPC 14, affirmed 239 F. 2d 426 (CADC, 1956).

[9] *City of Tacoma, Washington*, 10 FPC 424 (1951); *Portland General Electric Company*, 10 FPC 445 (1951); *Idaho Power Company*, 14 FPC 55 (1955); *City of Eugene, Oregon*, 14 FPC 408 (1955); *Puget Sound Power and Light Company*, 15 FPC 1496 (1956); *Portland General Electric Company*, 17 FPC 58 (1957); *Puget Sound Power and Light Company, et al.*, Projects Nos. 943 and 2114, Order Directing Modifications in Rock Island Dam Fishways, issued October 24, 1962, 28 FPC 718.

Licensee has continued in its exceptions to assert that there is no evidence to support the finding that (1) there are not sufficient spawning grounds elsewhere in the river to support the runs which might have spawned in the eliminated area, or (2) if there are such spawning grounds, they will not be used by the fish. Attacking the Department's estimates of the number of fish formerly spawning above Iron Gate as "completely speculative", it argues that without more definite evidence the need for a hatchery has not been established with adequate certainty. It also contends that the improvement of conditions for anadromous fish runs in the river and of the recreational potential[10] in the upper Klamath area resulting from the construction of Iron Gate Dam more than satisfy the obligations of Licensee and its ratepayers to the public, stating:

> In contrast to the public benefit already conferred by the company and its ratepayers, the benefit which might be realized by the construction of further fishery facilities is insignificant. We have already shown that there is no substantial evidence in the record to support a need for a hatchery. If no need can be shown the prospect for benefit is obviously small. In the face of these circumstances, it is apparent that the point of diminishing return for investment of Licensee's dollars in fishery facilities in the upper Klamath has long since been reached. The Licensee cannot in good conscience be required to pay more.

In support of its position that further expenditures should not be required of it for the development of natural resources, Licensee has cited certain of the past decisions of the Commission. A reading of those cases will reveal, however, that the Commission thoroughly considered on each occasion the effect of the proposed development on the anadromous fish population and found either a negligible result or made suitable provision to insure the perpetuation of the fish resource. Thus, in the *Portland* case,[11] the Commission rejected a request for fish facilities more extensive than those proposed in the application on a finding that the Deschutes River above the Pelton project site ". . . is not now a relatively large producer of anadromous fish and the likelihood of its becoming so in the near future is relatively remote." The cost of fish facilities installed at the project may amount to over five million dollars out of a total cost of approximately $20,575,000. In *City of Tacoma*[12] the Commission directed the licensee to install various fish facilities at an estimated initial cost of $7,100,000. The ultimate cost of facilities and improvements for the fishery resources program was expected to approximate $9,465,000 with an annual cost of operation and maintenance estimated at $610,000. It may be noted that the licensee proposed to construct and operate extensive fish hatchery facilities as a complement to the other fish protection measures. In *City of Eugene*,[13] the provisions in a conservation agreement between the licensee and the State Game Commission were deemed adequate to provide protection for the fishery resource in view of evidence that anadromous and fresh water fish did not ascend the river to the project area. Finally, in the *Idaho* case,[14] a provision was included for the licensee's construction of fishery facilities in recognition that the proposed Oxbow, low Hells Canyon and Brownlee developments on the Snake River ". . . would adversely affect the fish and wildlife resources of the area, and particularly the anadromous fish." The decision shows that an expenditure of about

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[10] A reservoir of approximately 1,200 surface acres has been created which is available to the public.

[11] 10 FPC 445 at 450. The decision of the Court of Appeals vacating the Commission's order, 211 F. 2d 347, was in turn reversed in *F.P.C. v. Oregon*, 349 U.S. 435, 75 S. Ct. 832.

[12] 10 FPC 424, 428–432, 436–439, affirmed 207 F. 2d 391, *cert.* denied 347 U.S. 936.

[13] 14 FPC 408, 413, 418.

[14] 14 FPC 55, 63, 77, affirmed 237 F. 2d 777, *cert.* denied 353 U.S. 924.

five million dollars was anticipated for the fishery program, exclusive of a low barrier dam which might be needed.

The cases relied upon by Licensee not only fail to afford support for its claim, but serve to demonstrate the importance attributed by the Commission to the preservation of existing fish resources in the comprehensive development of the nation's waterways. We agree with the examiner that without a hatchery there can be no assurance that the fishery resource will be preserved and maintained at a level approximately equal to that which existed prior to construction of the Iron Gate Development. As brought out in the record, Licensee could have applied for authorization to change its method of operation of the Copco plants, thereby obviating the necessity for the reregulating facility and leaving the spawning areas undiminished. For purely economic reasons it chose not to do so, and has created an impassable barrier which the evidence indicates will have a deleterious effect on the pre-existing fish population. Moreover, the evidence clearly establishes that construction and operation of the fish hatchery and related facilities, whether of the extent specified in the Department's petition or of the more limited capacity called for in the stipulation agreements, will not render the Iron Gate project economically infeasible.[15]

Licensee has excepted to a statement of the examiner tying the hatchery to the Article 50 facilities built under the terms of the July 1959 agreement and since conveyed to the State as elements necessary to a complete fishery facility. In view of the fact that these facilities were constructed solely to replace the trapping and egg collecting station formerly situated at Fall Creek, the argument of Licensee that its assumption of the cost of their construction should not influence the determination regarding responsibility for the hatchery construction costs is well taken and is accepted.

Since Licensee has created the situation which necessitates the fish hatchery, it is no more than reasonable to require that it pay the cost of construction thereof. For this same reason, it must also be required to pay for a substantial portion of the costs involved in the operation and maintenance of the facility. Only in this manner will the taxpayers of the State of California be saved from the imposition of a burden in the form of annual operating and maintenance expenses arising from an election of Licensee in a situation where an alternative course of action could have been selected by it which would not have necessitated the hatchery facilities. Licensee's argument that it should not be required to pay the cost of operation and maintenance on the basis of Section 5938 of the California Fish and Game Code and of the State policy as expressed therein is unavailing, as is its contention that the question as to who shall pay these expenses ". . . is a matter between the State and the Company." Whether the State Legislature intended that the statutory provision would be applicable to federally licensed projects or, as alleged by the Department, the section refers only to hatcheries constructed pursuant to State requirement, is wholly immaterial since the Federal government, in its enactment of the Federal Power Act, has occupied the entire field of licensing power projects on navigable and interstate water, to the exclusion of concomitant state jurisdiction.[16] That no residual or supplementary

[15] Although suitable regulation of the river flow could have been achieved through operating Copco No. 1 and Copco No. 2 as steady flow plants rather than as peak-load facilities, and the Commission could have directed Licensee so to modify its operations, this would have resulted in a loss of one-half of the 56,000 kw generating capacity of those plants. As noted earlier, Licensee has installed 18,000 kw capacity at the Iron Gate Development. At $210 per kw, the average cost given by Licensee for its hydroelectric facilities, the loss of 28,000 kw would have cost it $5,880,000.

[16] *State of Washington Dept. of Game* v. *F.P.C.*, 207 F. 2d 391; *F.P.C.* v. *Oregon*, 349 U.S. 435.

control with respect to the determination of necessary provisions for maintenance of the fish resource has been left to the states was indicated in the passage of the Fish and Wildlife Coordination Act,[17] which contemplates that power companies operating under a federal license would be required to make adequate provision for fish conservation as a condition of the license.

We are not convinced, however, that Licensee should be required to pay the full costs involved in operating and maintaining the hatchery and related facilities.[18] Some sharing in costs already is envisioned in Item No. 1(c) of the stipulation as agreed to by the parties. Reregulation in the flow of the Klamath River by Iron Gate Dam will not only restore the downstream reaches to the condition which existed prior to 1918 but will also serve to diminish or possibly even eliminate destructive natural fluctuations in the river level, particularly in those reaches contiguous to the Development. To this extent, the river and the enjoyment thereof by the people of the State of California will be enhanced over its original condition. Availability of the Iron Gate Reservoir to the public for lake fishing, boating, swimming, and other recreational activities likewise indicates that the advantages to be derived from Licensee's election to construct the Iron Gate Development are not all one-sided. In our opinion, an equitable division of costs will be achieved, commensurate with the benefits attained, if Licensee is required to construct the hatchery and, again assuming State operation, to pay the State for 80 percent of the yearly costs of operation and maintenance of all fishery facilities at the Development. Although we are unable to order the State of California to assume the remaining 20 percent of the operation and maintenance expenses, we believe that the apportionment of costs as herein set out is reasonable and will be so considered by the State agency. Apportionment of the costs in this manner also will provide the State with a financial incentive to assure economy of operation of the fishery facilities. Moreover, while no major difficulties are anticipated under the arrangement, we shall retain continuing jurisdiction to settle possible disputes which may arise over the determination of the proper annual amount to be charged Licensee by the State.

The Commission further finds:

(1) Iron Gate Development is a unit of Project No. 2082, licensed to Pacific Power & Light Company, and is situated on the Klamath River, a navigable water of the United States as previously found by the Commission.

(2) Iron Gate Development has been constructed by Pacific Power & Light Company and is now in operation.

(3) Iron Gate Development blocks and prevents the seasonal migration of anadromous fish to approximately 16 miles of spawning gravels in the Klamath River and its tributaries between the Iron Gate Development and the Copco No. 1 and Copco No. 2 hydroelectric plants.

(4) To compensate for the loss of the spawning areas described in Finding (3) hereof, a fish hatchery should be constructed, operated, and maintained at

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[17] 16 U.S.C. 661, *et seq.*

[18] Both the Department's brief and that of the Licensee include the question of responsibility for the costs of operation and maintenance of the fish trapping and egg collecting station among the issues to be decided herein. Licensee's statement that the Department undertook to operate these facilities and indicating that the matter is settled is contradicted in the exchange of correspondence between Licensee and the Department wherein the latter was permitted to operate the facilities temporarily in full recognition by both parties that such action was not determinative of the issue as to their continued operation and maintenance. The presentations made by the parties do not distinguish between the facilities on this point nor do they in any way indicate that the matter is now ripe for decision. Our determination herein with respect to operation and maintenance of the hatchery facility, accordingly, is also dispositive of this issue.

Iron Gate Development of a size and capacity to annually hatch and rear 200,000 yearling steelhead trout to a total weight not to exceed 20,000 pounds, 75,000 yearling silver salmon to a total weight not to exceed 5,000 pounds, 6,000,000 fingerling king salmon to a total weight not to exceed 20,000 pounds, and 5,500,000 king salmon swim-up fry; provided, not more than 12,800,000 king salmon eggs should be required to be accommodated in any year at the Iron Gate hatchery facility.

(5) Licensee has constructed a fish trapping and egg collecting station at the Iron Gate Development of sufficient size and capacity to obtain the eggs for supplying a hatchery of the aforesaid size and capacity.

(6) Iron Gate Development will be economically and financially feasible if the aforesaid fish facilities are constructed, operated, and maintained in the manner as hereinafter provided.

(7) The construction, operation, and maintenance of a fish hatchery, as hereinafter provided, of the aforesaid size and capacity is necessary in the public interest to sustain the anadromous fishery resource of the upper Klamath River at a level approximately equal to that which existed prior to the construction of the Iron Gate Development.

The Commission orders:

(A) The license for Project No. 2082, as amended, is further amended to provide as follows:

Article 49. The Licensee shall construct or arrange for the construction, at its expense, of a fish hatchery at Iron Gate Development, together with supplemental structures and ancillary equipment as detailed in the agreement filed with the Commission on August 17, 1962, by the State of California Department of Fish and Game and the Licensee, of a size and capacity to annually hatch and rear 200,000 yearling steelhead trout to a total weight not to exceed 20,000 pounds, 75,000 yearling silver salmon to a total weight not to exceed 5,000 pounds, 6,000,000 fingerling king salmon to a total weight not to exceed 20,000 pounds, and 5,500,000 king salmon swim-up fry; provided not more than 12,800,000 king salmon eggs shall be required to be accommodated in any year. Plans for the aforesaid facility shall be prepared by Licensee, in cooperation with the State of California Department of Fish and Game and the U.S. Fish and Wildlife Service, Department of the Interior, and shall be submitted to the Commission for approval within 60 days of the issuance of this order. The facility shall be constructed within one year from the date of approval of the plans by the Commission.

Article 50. Licensee shall reimburse the State of California Department of Fish and Game for 80 percent of the combined annual cost of operation and maintenance of the facilities and appurtenances constructed pursuant to Article 49 and of the permanent fish trapping, collecting, holding, and spawn-taking facilities and appurtenances constructed at Iron Gate Dam. Should Licensee and the State of California Department of Fish and Game fail to agree on the amount to be paid by the Licensee for this purpose, the Commission reserves the right to determine the amount of such annual payment, after notice and opportunity for hearing.

(B) Pending completion of the aforesaid facility, Licensee shall take all reasonable measures to provide for maintenance of the Klamath River fishery resource.

(C) To the extent not inconsistent herewith, the decision of the examiner is affirmed.

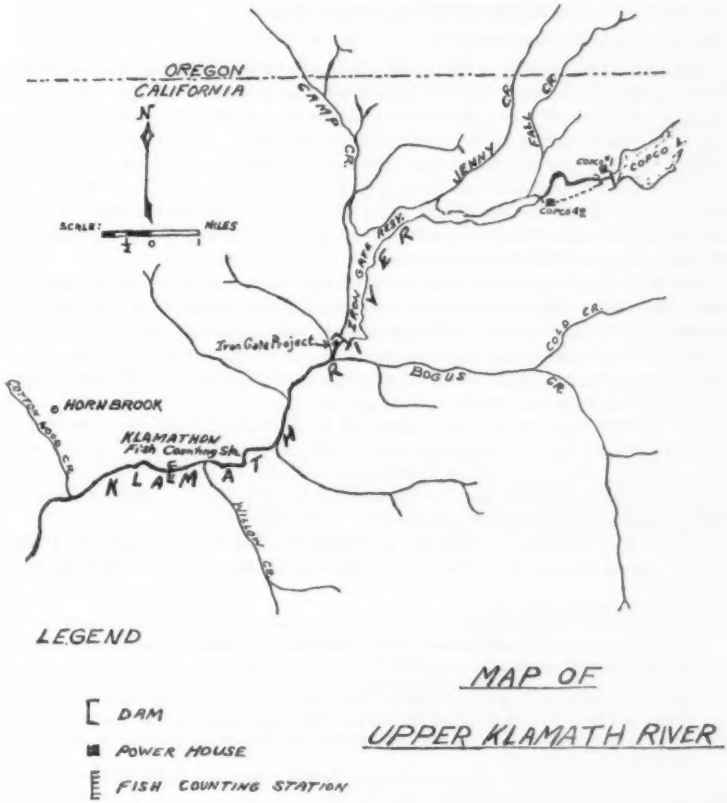
(D) All exceptions to the decision of the examiner not herein granted are hereby denied.

(E) This order amending the license for Project No. 2082 shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Federal Power Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for Licensee and returned to the Commission within 60 days from the date of its issuance.

INITIAL DECISION

UPON PETITION BY THE STATE OF CALIFORNIA TO REQUIRE LICENSEE TO CONSTRUCT, OPERATE, AND MAINTAIN A FISH HATCHERY

(Issued November 14, 1962)



MAP OF

UPPER KLAMATH RIVER

LEVY, *Presiding Examiner:* This proceeding is before the Federal Power Commission by reason of a petition filed by the California Department of Fish and Game (Department) on August 21, 1961, requesting that Pacific Power and Light Company (Licensee) be required to construct, operate, and maintain a

fish hatchery at its recently completed Iron Gate Dam (Project No. 2082) pursuant to Article 49 of the license.[1]

The Licensee, in its Answer of September 13, 1961, denied the necessity for any fishery facilities to maintain normal fish runs in the Klamath River, or that it should be required to construct or maintain such facilities. On January 30, 1962, the Commission issued an Order setting the matter down for hearing and prescribing certain prehearing procedures, including the filing and exchange of prepared testimony and exhibits. After the close of the hearing, held June 4th and 5th in San Francisco, Licensee and the Department stipulated, at the request of the Presiding Examiner, to the details of fish hatchery facilities which would be built if required by the Commission. The stipulation filed August 17, 1962 (Appendix A), is without prejudice to the Licensee's position that there is no need for a fish hatchery and that, in any event, it is not liable for construction, operation, or maintenance.

Background of the Proceeding

The instant proceeding is the latest episode in an extended fishery controversy between the Department and the Licensee[2] that goes back to the construction in 1918 and 1925, of two hydroelectric plants known as Copco No. 1 and Copco No. 2 on the Klamath River in California just below the Oregon border (see Map). In lieu of a fish ladder the Licensee constructed a fish hatchery at Fall Creek, a short distance down river and, under an agreement with the Department, conveyed the facility to the State of California in March 1919. In 1925, the Licensee constructed and conveyed to the State an egg collecting station at Klamathon some 15 miles downstream.

The Fall Creek hatchery was operated and maintained by the Department until 1948 when "operations were discontinued due to the high cost of maintaining the installation and high operational cost of raising fish". (23 FPC 66) The egg collecting station was continued in operation by the Department until the construction by the Licensee of new egg collecting facilities in March 1962, pursuant to Article 50 of the Iron Gate license.[3]

The hydroelectric plants were operated to meet peak load requirements by alternately storing and releasing water with increasingly severe downstream fluctuations. The Department maintained, and the Presiding Examiner in the license proceeding found, that the fluctuating water levels ". . . have a decidedly detrimental effect on fish and aquatic life." (23 FPC 66)

In 1950 the Department filed suit to compel the Licensee to construct a regulating dam at Iron Gate. After protracted negotiations and the commencement

[1] Article 49 reads as follows:

Article 49. The Licensee shall construct, maintain, and operate or shall arrange for the construction, maintenance, and operation of artificial propagation facilities and such other permanent fish facilities and protective devices including, but not limited to, fish-hauling trucks, fish screens or ladders, and comply with such reasonable modifications in project structures and operation in the interest of fish life as may be prescribed hereafter by the Commission upon the recommendation of the Secretary of the Interior and the California Department of Fish and Game, after notice and opportunity for hearing.

[2] "Licensee" also includes, where applicable, Pacific Power and Light Company's predecessor, California Oregon Power Company (Copco).

[3] Article 50 (25 FPC 579, 581) reads as follows:

The Licensee shall construct, concurrently with the construction of Iron Gate Dam, and thereafter operate and maintain permanent fish trapping, collecting, holding, and spawn-taking facilities and appurtenances at or near downstream from Iron Gate Dam as may be prescribed hereafter by the Commission upon the recommendation of the Secretary of the Interior and the California Department of Fish and Game, after notice and opportunity for hearing.

of license[4] proceedings to authorize the construction and operation of a regulating dam, the Department and the Licensee entered into an agreement on July 27, 1959, Exhibit 62 in the license proceeding, under which the Department withdrew its objections to the Iron Gate development as proposed by the Applicant. The agreement provided that the Licensee would construct a dam at Iron Gate for the principal purpose of regulating the flow of water in the Klamath River, and would build fish trapping and egg collecting facilities in accordance with plans and specifications to be furnished by the Department. The necessity for the construction of a fish hatchery at Iron Gate was expressly reserved for future determination.[5] Paragraph 6(b) of the Agreement provides as follows:

> The State, the Department and the Commission shall forthwith cause to be withdrawn and dismissed all protests and interventions with respect to the pending applications of Copco before the Federal Power Commission in Project No. 2082, and before the State Water Rights Board in Application No. 17527; provided, that *the right is reserved to all parties hereto to be heard in any future proceedings in regard to fishery facilities, other than the fish trapping and egg collecting facilities referred to in paragraph 3 thereof.* [Emphasis supplied.]

Construction of the Iron Gate facility, in a single stage rather than the two stage construction originally contemplated, was completed in January 1962 at a cost in excess of $8,000,000. Of this amount more than $700,000 was represented by the cost of building the fish trapping and egg collecting facilities. The Iron Gate Development as completed consists of an earthfill dam about 173 feet high with crest elevation of 2,338 feet, a concrete side channel spillway of the overflow type in the right abutment, a reservoir with normal water surface at elevation 2,328 feet and a capacity of about 58,000 acre-feet, a tunnel through the right abutment which will serve as a sluice and diversion during construction, an intake structure, a power conduit through the left abutment, a penstock, a powerhouse with one 25,000-horsepower turbine connected to an 18,000-kilowatt generator, a substation adjacent to the powerhouse, a 66 kv transmission line extending to COPCO No. 2 Switchyard, a fish ladder and fish trapping facilities complete with appurtenant facilities, and other electrical and mechanical facilities. The existing fish facilities are being operated by the Department temporarily, with the consent of the Licensee, pending determination of responsibility for operation and maintenance (See Exh. B attached to California's Reply Brief).

The Issues

The stipulation of August 17, 1962, covering the details of fish hatchery facilities, if required, leaves the following issues for determination:

1. Are additional fish rearing facilities required at Iron Gate to preserve and maintain the fishery resource at a level approximately equal to that which existed before the construction of the Iron Gate Development?

2. If so, who is responsible for construction, operation and maintenance of the fishery facilities?

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[4] The full history of the proceedings in Project No. 2082 is stated in 23 FPC 59, 62 (1960). The license was further amended at 25 FPC 579 (1961) so as to authorize changes in the design from a concrete arch dam to an earth-filled dam, the erection initially to its ultimate height, and reduction in the size of the generator from 25,000 to 18,000 kilowatts.

[5] The Presiding Examiner denied a request by the Department for the inclusion in the findings of language which could be construed as implying a determination that fish hatchery facilities ought to be constructed as a condition of the license. (23 FPC 68, 71)

The Evidence

The Department's experts, fishery biologists Skinner, Croker, Bailey, Hill, and Fraser testified in substance that the Iron Gate Development prevents access by salmon and steelhead to about 16 miles of spawning gravel between Copco Dam and Iron Gate which historically has been utilized by anadromous fish to spawn and reproduce, and that a hatchery is needed to replace these spawning areas which have been eliminated by the construction of the Iron Gate Development. Croker testified that the general trend of salmon runs above Klamathon is downward (Exh. 11–A) and that, based on live fish counts, aerial surveys, carcass and redd counts, 57.1 percent of the fish passing Klamathon spawned above Iron Gate.

Robert Macklin, the Department's Supervisor of Fish Hatcheries, proposed the construction of a fish hatchery at Iron Gate, based on runs of 15,000 king salmon at Klamathon, designed to incubate, hatch, and rear annually 200,000 yearling steelhead trout, 75,000 yearling silver salmon, and 6,000,000 fingerling king salmon, to a total weight of 121,500 pounds, at an estimated construction cost of $1,003,020, and an annual operating and maintenance cost of approximately $95,256. (Exh. Nos. 6, 7, 8, 9)

J. C. Boyle, Licensee's Vice President, testified in support of the Company's position. Licensee's fishery biologist, Dr. Hamilton, conceded the loss of spawning and rearing areas eliminated by the construction of Iron Gate Dam. His proposed hatchery facilities were smaller and less costly than those proposed by the Department. (Exh. Nos. 15–18, inclusive) The facilities detailed in the stipulation (Appendix A) are also less costly than the Department's original proposals. The total weight of all fish produced is reduced from 121,500 pounds to 50,000 pounds. The holdover of one million fingerlings for fall release is eliminated. Reductions in construction costs are effected by the substitution of rearing ponds for nursery ponds, reduction in the area required to accommodate the hatchery troughs, the number of incubation trays, and the elimination of all of the 14 nursery ponds originally proposed. The Staff estimates that annual operating and maintenance costs will be reduced from $95,256 to $54,278. (Staff br. p. 11)

Discussion

1. Licensee maintains that the Department has not established the need for a fish hatchery at Iron Gate, and questions the accuracy of its estimates as to the number of fish spawning above the Iron Gate Development. It argues that normal runs will be sustained by spawning grounds *below* Iron Gate Dam. The testimony indicates, however, that Iron Gate Dam, completed in 1961, prevents access by salmon and steelhead trout to about 16 miles of spawning gravel, thereby eliminating one of the most popular stream fishing areas in the upper Klamath River. (23 FPC, 66, 67) Licensee's fisheries biologist, Dr. Hamilton, conceded that ". . . the Iron Gate reservoir has eliminated whatever salmon and steelhead spawning areas existing between Iron Gate and COPCO Dam . . ." (Tr. 246) and that ". . . about 970 steelhead were trapped at the site this spring after the Iron Gate egg-taking station was put into operation on February 27, 1962." (Tr. 278, 286)

The historic decline of Klamath River king salmon is documented in Exhibit 11–A, the most detailed data of record. While the accuracy of the Department's estimate that 57.1 percent of the fish runs at Klamathon spawned above Iron Gate may be questioned, these estimates are the best available and do support the necessity for additional facilities to replace the lost spawning areas above Iron Gate Dam. I conclude that facilities for the artificial propagation and the perpetuation of the anadromous fish are required at Iron Gate to preserve and

maintain the fishery resource at a level approximately equal to that which existed before the construction of the Development. The question remains as to whether a hatchery is required at Iron Gate.

Pursuant to the agreement of July 27, 1959, and Article 50 of the Iron Gate license, (Project No. 2082), Licensee has constructed fish trapping and egg collecting facilities which went into operation on February 27, 1962. The Department argues that without the further construction of a hatchery, the egg collecting station is incomplete since "the eggs cannot be simply released back into the river. It is needed as a substitute for [the] natural hatching and incubation process that would normally occur above the Iron Gate Dam had the dam not been constructed". (Tr. 18) The Licensee suggests that any fish which would penetrate the river as far as the Iron Gate Dam will turn back to find suitable spawning grounds down river, and, if this does not maintain the runs, the fish can be transported downstream to other suitable spawning grounds. There is no assurance, however, or evidence that a sufficient number of anadromous fish reaching Iron Gate Dam will turn back and spawn downstream; or that they can be made to do so even if they are trapped and physically transported to downstream areas. In short, I am unable to conclude from the evidence of record that the upper Klamath fish runs can be maintained at an equivalent level without the construction of additional fish rearing facilities. A hatchery[6] is the established method of insuring that the eggs taken from the fish at the trapping facility are properly incubated, hatched, and reared. Licensee's predecessor had constructed a fish hatchery at Fall Creek in 1919, which was operated and maintained by the Department until 1948. I concluded, therefore, that fish hatchery facilities are required to replace natural spawning eliminated by the dam and to complete the fish trapping and egg collecting station heretofore constructed at Iron Gate. Fortunately, the parties have stipulated to the nature of the hatchery facilities to be built if required. These facilities are described in Appendix A, attached hereto and made a part of this decision.

2. The construction costs of the hatchery, as detailed in the stipulation, should be paid for by the Licensee. This is consistent with the agreement between the Licensee and the Department of July 27, 1959 (Exh. 62) pursuant to which the Licensee built the fish trapping and egg collecting facilities. The hatchery will expand the egg collection station into a complete facility for the maintenance of the fishery resource of the upper Klamath River. The agreement provides (para. 3) for the conveyance of the "permanent fish trapping and egg collecting facilities" to be built by the Licensee, ". . . and title thereto, together with the land upon which they are situate . . ." to the State. Similarly, the complementary hatchery should be conveyed to the State to be owned, operated, and maintained by the Department as an integrated fishery facility. The cost of maintenance and operation, however, should be borne by the Department and the State which will now own, control, and operate the entire facility.

The Department argues that the 1959 agreement is not conclusive since it did not expressly agree therein to operate and maintain the fish facilities. The agreement did leave open the issue of hatchery construction and overall operation and maintenance costs. These are the issues to be resolved in this proceeding.

Operation and maintenance by the State is suggested, however, by the following considerations. Historically, the State operated and maintained the Fall Creek fish hatchery constructed by COPCO and conveyed to the State in 1919.

[6] The Department's witness, Macklin, testified that 15 hatcheries are being operated by the California Department of Fish and Game. (Tr. 145.)

and the fish trapping facilities at Klamathon built by COPCO and conveyed to the State in 1925. The Fall Creek hatchery was abandoned [7] by the Department in 1948 as too costly. The Iron Gate hatchery, which Licensee is now required to build under this order, will substantially replace the Fall Creek hatchery previously operated and maintained by the State.

The Fall Creek hatchery was operated and maintained by the State, as are all 15 State hatcheries, under the California Fish and Game Code. Section 5938 thereof provides in pertinent part:

> Whenever in the opinion of the commission it is impracticable, because of the height of any dam, or other conditions, to construct a fishway over or around the dam, the commission may, in lieu of the fishway, order the owner of the dam completely to equip, within a specified time, on a site to be selected by the department, a hatchery, together with dwellings for help, traps for the taking of fish, and all other equipment necessary to operate a hatchery station, according to plans and specifications furnished by the department. *After such hatchery has been constructed, the department shall operate it without further expense to the owner of the dam except as provided in Sections 5940 and 5941.* [Emphasis supplied.]

The Department argues that the Fish and Game Code of California is inapplicable to a federally licensed power project. The Federal Power Commission has the authority under the Federal Power Act, which it has exercised in appropriate circumstances, to require the construction, operation, and maintenance of fish facilities by the Licensee as a condition of the license. State law, policy, and history are, however, relevant considerations in the exercise of such power. The policy of the State of California, as set forth in its Fish and Game Code, is to share in the expense of maintaining fish runs, disrupted by the construction of hydroelectric projects, by operating and maintaining fish hatcheries constructed by the owner of the project at his own expense. This policy is not in conflict with the Federal Power Act or Commission policy. I see no good reason why it should not be followed in this proceeding.

Here the Department by agreement has obligated the Licensee to convey to the State the fish trapping and egg collecting station which it built and the Department is now operating. The fish hatchery when completed should also be conveyed to the State so that its operation can be integrated with the related fishery facilities.

State ownership and control of the Iron Gate fish facilities should carry with it responsibility for the cost of operation and maintenance. This is consistent with California law, with sound fiscal policy, and with the prior pattern on the Upper Klamath.

The Department argues that it is unfair and inequitable to burden California taxpayers with part of the costs of generating power which is distributed and sold interstate. It is not unfair, however, to require taxpayers to participate in the maintenance of a natural resource from which all benefit. The California legislature long ago decided to share in the expense of preserving fish by operating and maintaining hatcheries constructed by the owners of California dams. Moreover, the taxpayers of California also benefit from the construction of licensed power projects. The ratepayers of California and Oregon may well ask why they should be saddled in perpetuity with the unknown and escalating costs of hatcheries operated by the Department, without cost limitations, for the benefit of all citizens and taxpayers. The objective of the Federal Power Act is

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[7] After its abandonment, eggs taken at Klamathon were reared at the Department's Mount Shasta hatchery.

the maximum development of the entire water resource including power and recreation[8] as well as fish. I am therefore compelled to reject the position of the Department that the Licensee should, in addition to constructing the hatchery, defray *all* operations and maintenance expense. The history of this project and the facts in this proceeding suggest otherwise.

The Staff brief is silent in respect of who is to bear the cost of operating and maintaining the egg collecting facility at Iron Gate. The Staff proposes, however, that Licensee and the State share equally in the costs of operating and maintaining the fish hatchery to be constructed at Licensee's expense. The State would continue to pay for the annual operating and maintenance expense attributable to an annual average of 3,000,000 Klamath River king salmon eggs presently hatched and reared at its Mount Shasta hatchery for release into the upper Klamath River.

Licensee and the Department oppose the Staff suggestion; Licensee on the ground that it has no obligation to pay for half the operation and that the Staff proposal is a compromise[9] "unsupported by law or reason". The Department argues that hatchery construction should not be conditioned on their acceptance of the obligation to operate and maintain the facility. I have concluded for all the reasons previously discussed that the Department should pay for the entire cost of maintaining facilities it will own, control, and operate in conjunction with numerous other hatcheries throughout the State.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, including the pleadings, the evidence adduced, and the briefs filed, it is found and concluded in addition to the findings and conclusions heretofore stated that:

(1) The erection of the Iron Gate development eliminated approximately 16 miles of natural spawning grounds previously used by king salmon, silver salmon, and steelhead trout.

(2) A fish hatchery, the details of which are described in a stipulation filed with the Commission on August 17, 1962, (Appendix A), is required to sustain the anadromous fishery resources of the upper Klamath River at a level approximately equal to that which existed before the construction of the Iron Gate Development.

(3) The public interest in the conservation and the development of the fishery resources affected by the Iron Gate Development requires the construction of the fish hatchery by the Licensee, and its ownership, operation, and maintenance by the Department as hereinafter provided.

ORDER

WHEREFORE, IT IS ORDERED, pursuant to Articles 49 and 50, Project No. 2082, as amended, subject to review by the Commission that:

(A) The Licensee shall provide for a site and arrange for, and pay for, the construction of a fish hatchery as described in the stipulation filed herein on August 17, 1962, (Appendix A).

(B) Plans for the aforesaid facilities shall be prepared by the Licensee, in cooperation with the State of California Department of Fish and Game, shall be submitted to the Commission for approval within 60 days of the issuance of this

[8] The Iron Gate Development has improved the recreational facilities of the upper Klamath by creating a 1,200 acre reservoir available to the public. (Tr. 181–183.)

[9] The Licensee points out (Reply br. p. 3) that sharing costs will create serious allocation problems with respect to administrative overhead and other costs associated with running the Department and its facilities throughout the State of California.

Order, and shall be constructed within one year from the date of approval by the Commission. Upon completion of the aforesaid facilities, all the fish facilities shall be conveyed by Licensee to the State; provided that the Licensee shall not be required to reimburse the State of California for the cost of operation and maintenance.

WILLIAM C. LEVY,
Presiding Examiner.

APPENDIX A

BEFORE THE FEDERAL POWER COMMISSION

IN THE MATTER OF PACIFIC POWER & LIGHT COMPANY—PROJECT No. 2082

Stipulation

WHEREAS, at the hearing in the above entitled matter on June 5, 1962, Examiner Levy requested that representatives of Licensee and the Department of Fish and Game, State of California (Department) meet within fifteen days after the close of the hearing for the purpose of entering into stipulations sufficient to establish specifications agreeable to both parties for fish hatchery facilities which might be built at Iron Gate if the need for any such facilities is determined in this proceeding; and

WHEREAS, said representatives have met and have agreed upon specifications for said fish hatchery facilities;

Now, THEREFORE, Licensee and the Department and their sucessors and assigns hereby stipulate as follows:

1. If the Commission determines that fish hatchery facilities are required at Iron Gate, said facilities shall be sufficient to accommodate the incubation, hatching, and rearing of the following kinds and numbers of fish each year:

(a) Steelhead trout (*Salmo gairdnerii gairdnerii*) Rear up to 200,000 yearlings to a total weight not to exceed 20,000 lbs.

(b) Silver salmon (*Oncorhynchus kisutch*) Rear up to 75,000 yearlings to a total weight not to exceed 5,000 lbs.

(c) King salmon (*Oncorhynchus tshawytscha*) Rear up to 6,000,000 fingerlings to a total weight not to exceed 20,000 lbs., and release an additional 5,500,000 swim-up fry. Not more than 12,800,000 king salmon eggs are required to be accommodated in any one year by the Iron Gate hatchery facility; provided, however, if the total number of king salmon eggs taken at the Iron Gate egg collection facility in any one year is equal to or less than 15,800,000 the fish hatchery facilities described herein shall not be required to accommodate more than 81% of the total king salmon eggs taken during the year.

2. Heath type incubation cabinets, and rearing troughs and ponds of design and construction specified in Exhibit 6 herein or as modified to the satisfaction of both parties, together with necessary water supply and conduits, of the following number are fully sufficient to accommodate the fish propagation program outlined under paragraph 1 above:

(a) *Steelhead trout:*	
Incubation trays	[1] 0
Rearing troughs	12
Rearing ponds	8
(b) *Silver salmon:*	
Incubation trays	25
Rearing troughs	0
Rearing ponds	2

[1] Salmon trays will accommodate steelhead.

(c) *King salmon:*

Incubation trays	2,133
Rearing troughs	0
Rearing ponds	(2)

The fish propagation facility shall include, but shall not necessarily be limited to, the following supplemental structures of standard construction of the type shown in Exhibit 6, together with such other ancillary equipment necessary to accommodate the facility:

a. Aerator with maximum capacity of 10 c.f.s.;

b. Four family type frame residences;

c. One frame building with sufficient space to accommodate shop, garage and office facilities;

d. One elevated storage bin; and

e. One dry storage building.

IN WITNESS WHEREOF this stipulation was executed as of the 20th day of July, 1962.

STANLEY MOSK,
Attorney General, State of California.
By (S) RALPH W. SCOTT,
BROBECK, PHLEGER & HARRISON,
By (S) JOHN E. SPARKS.

Approved:
DEPARTMENT OF FISH AND GAME,
STATE OF CALIFORNIA.
By (S) W. T. SHANNON,
Its Director.
PACIFIC POWER & LIGHT COMPANY,
By (S) D. R. MCCLUNG,
Its President.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

GEORGE S. HAMMONDS, DOCKET NO. G-16520;[1] SCOTT HAMMONDS, DOCKET NO. G-16521[1]

ORDER TERMINATING PROCEEDINGS IN PART

(Issued March 15, 1963)

On December 21, 1962, George S. Hammonds and Scott Hammonds (Respondents) jointly filed a document entitled "Motion for Commission Action on Motions for Reconsideration of Orders Suspending Increased Rates and for Termination of Proceedings." No protests have been received with respect to Respondents' motion.

By separate orders issued October 14, 1958, the proposed increased rates of Respondents, designated as Supplement No. 3 to George S. Hammonds' FPC Gas Rate Schedule No. 1, and Supplement No. 7 to Scott Hammonds' FPC Gas Rate Schedule No. 1, were suspended until May 1, 1959, when, upon proper

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[2] Not less than 18 or more than 21.

[1] Consolidated with the proceedings in Docket No. AR61-1, *et al.*, by order issued December 23, 1960, 24 FPC 1121.

motions, they became effective subject to refund. The gas involved in these proceedings, sold to Northern Natural Gas Company (Northern), is from the Ellenburger Formation in the Puckett Field, Pecos County, Texas (Railroad Commission District No. 8).[2] The gas contains a high percentage of carbon dioxide, which must be removed to convert the gas to pipeline quality gas. The increased rates here involved are 16¢ per Mcf, an increase of 1¢ per Mcf, for the sale of gas at the tailgate of the plant, but include a 5¢ per Mcf processing charge by Northern for removal of the carbon dioxide. In effect, Hammonds is receiving a net rate of 11¢ per Mcf for pipeline quality gas.

On January 5, 1959, and February 2, 1959, George S. Hammonds and Scott Hammonds, respectively, filed motions for reconsideration of the suspension orders. Thereafter, on January 30, 1961, Respondents filed motions to terminate these proceedings, and these motions were denied by order of March 29, 1961. Motions for reconsideration of the order of March 29, 1961 were denied by order issued July 21, 1961. As stated by Respondents in the instant motion, the motions filed January 5, 1959, and February 2, 1959, were never acted upon by the Commission. However, the arguments made by Respondents in those motions were answered in the orders of March 29, 1961, and July 21, 1961.

Motions for termination were filed by Respondents in the instant case prior to the termination of the suspension proceedings involving *Phillips* and *Atlantic*, *infra*, whereby those producers were permitted to collect without refund obligation the same 16¢ rate involved here for the same quality of gas from the same formation. Had action been taken upon Respondents' motions at that time consistent with the action taken in *Phillips* and *Atlantic*, the proceedings involving Respondents would also have been terminated. The sales covered by Respondents' rate schedules represent the only jurisdictional sales of Ellenburger gas for which producers are not receiving at least as high a price, without obligation to refund, as that sought herein by Respondents for the same quality of gas.[3] Moreover, Respondents' sales cover only a small portion of the jurisdictional sales made from the Ellenburger formation.

Under the special circumstances set forth above, we conclude that the instant proceedings should be terminated consistent with the action taken in the *Phillips* and *Atlantic* cases. Our action in this case, however, is without prejudice to any action that we may take with respect to Respondents' rates for the sales involved here in connection with the Section 5(a) aspects of the Permian area rate proceeding in Docket No. AR61–1, *et al.*

The Commission finds:

The proceedings in Docket Nos. G–16520 and G–16521 should be terminated insofar as they pertain to the sale of gas from the Ellenburger formation, Respondents' refund obligations with respect to the sale of such gas should be discharged, and in all other respects the proceedings should remain in full force and effect.

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[2] Respondents state in their motion that gas is being sold from both the Ellenburger and Devonian formations under George S. Hammonds' rate schedule, but only Ellenburger gas is sold under Scott Hammonds' rate schedule. However, acreage dedicated under Scott Hammonds' rate schedule includes the Devonian formation. Respondents' motion relates only to the Ellenburger gas.

[3] See, for instance, *Phillips Petroleum Company*, Docket No. G–17071, order issued May 3, 1960; *Atlantic Refining Company, et al.*, Docket No. G–13919, *et al.*, order issued October 13, 1960; and Opinion No. 328, *Transwestern Pipeline Company, et al.*, Docket No. G–14871, *et al.*, opinion issued August 10, 1959, 22 FPC 391, and order issued in reopened proceedings on July 11, 1962, 28 FPC 109, rehearing denied. August 29, 1962. 28 FPC 393.

The Commission orders:

The proceedings in Docket Nos. G–16520 and G–16521 are hereby terminated insofar as they pertain to the sale of gas from the Ellenburger formation, Respondents' refund obligations with respect to the sale of such gas are hereby discharged, and in all other respects the proceedings shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, and L. J. O'Connor, Jr.

CITY OF NEOSHO RAPIDS, KANSAS, DOCKET NO. CP63–142

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued March 15, 1963)

On November 23, 1962, the City of Neosho Rapids, Kansas, (Applicant) filed in Docket No. CP63–142 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Cities Service Gas Company (Cities Service) to establish physical connection of its transmission facilities in Lyon County, Kansas, with the proposed facilities of and to sell natural gas to Applicant for resale and distribution in Neosho, all as more fully set forth in the application.

Applicant proposes to construct and operate a distribution system in Neosho as well as a 1 mile lateral transmission line extending from the proposed distribution facilities to Cities Service's transmission line. The estimated total cost of the proposed facilities is $45,000, which cost will be financed by the issuance of General Obligation and Revenue Bonds.

Applicant's estimated third year peak day and annual natural gas requirements are 120 Mcf and 10,500 Mcf, respectively.

On December 10, 1962, Cities Service filed an answer to the subject application stating that it had no objection to the granting of the application.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on February 2, 1963 (28 F.R. 1085). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) Applicant, City of Neosho Rapids, Kansas, is a municipal corporation incorporated under the laws of the State of Kansas and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in the City of Neosho Rapids.

(3) It is necessary and desirable in the public interest that Cities Service be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 120 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Cities Service within one year from the date of issuance of this order.

(5) The requirement that Cities Service serve Applicant, as proposed, will not place any undue burden upon Cities Service nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Cities Service Gas Company be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 120 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully set forth in the application.

(B) Applicant shall be prepared to receive natural gas from Cities Service within one year from the date of issuance of this order.

(C) Cities Service shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

MEMORANDUM OPINION NO. 382

SHELL OIL COMPANY; SHELL OIL COMPANY (OPERATOR), ET AL; SHELL OIL COMPANY (OPERATOR); HUNT OIL COMPANY; N. B. HUNT; LAMAR HUNT; W. H. HUNT; H. L. HUNT; LYDA HUNT-MARGARET TRUSTS; LYDA HUNT-CAROLINE TRUSTS; LYDA HUNT-HERBERT TRUSTS; LYDA HUNT-BUNKER TRUSTS; LYDA HUNT-LAMAR TRUSTS; SECURE TRUSTS; CLAUDE E. AIKMAN; THE SUPERIOR OIL COMPANY; SUN OIL COMPANY AND SUN OIL COMPANY (OPERATOR), ET AL; DOCKET NO. RI61-515

MEMORANDUM OPINION AND ORDER REJECTING PROPOSED RATE INCREASE FILINGS, DISALLOWING PROPOSED INCREASES IN RATES AND ORDERING REFUNDS

(Issued March 15, 1963)*

Syllabus

1. Reaffirming *Pure Oil*, Commission *finds* respondents lack "contractual support" necessary to permit proposed increases to be filed—failing to show that their gas is comparable to West Texas gas or that their favored nation clauses have been triggered. PP. 501; 503.
2. Commission *holds* it will not approve a rate increase based upon another rate increase which has been rejected. PP. 501; 504.
3. Commission *rejects* contention as to mootness—fact that producer filed renegotiated rate lower than, and in place of favored-nation clause, does not moot triggering issue for period during which producer's favored-nation rates were allegedly effective. PP. 501; 505.
4. Respondents' argument that by "accepting" their rate filings, Commission later was barred from rejecting them for lack of contractual support has little legal basis. P. 503.
5. Producer filing a favored-nation rate increase must show: (1) the validity of the triggering rate, and (2) the justness and reasonableness of the increased rate. P. 504.

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* Initial decision appears on p. 510. Memorandum Opinion Opinion No. 382–A issued April 26, 1963, denied rehearing and stay, 29 FPC 851. Affirmed, *Shell Oil Co.* v. *F.P.C.*, 334 F. 2d 1002 (CA3–1964).

6. Commission *rejects* proposed rate increase filings and *disallows* proposed increases in rates in proceeding arising under Section 4, of the Natural Gas Act. P. 505.

Commissioner Morgan *concurring.*
Commissioner Ross *concurring*, joins in Commissioner Morgan's statement.

Joseph C. Spalding, for Shell Oil Company.
R. A. Lynch and *Albert J. Feigen*, for Claude E. Aikman.
H. W. Varner, Roland B. Voight and *Homer F. Penn*, for the Superior Oil Company.
John A. Ward, III; Charles F. Heidrick, J. Colbert Peurifoy, Robert E. May, Porter E. Noble and *Richard F. Generelly*, for Sun Oil Company.
John F. Murphy, for the People of the State of California, and Public Utilities Commission of the State of California.
J. David Mann, Jr., William W. Ross, John E. Holtzinger, Jr., and *William E. Zeiter*, for Southern California Gas Company and Southern Counties Gas Company of California.
Patrick G. Sullivan, J. Colin Lizotte, George D. Horning, Jr., John J. Curtin, Jr., and *Allen R. Grambling*, for El Paso Natural Gas Company.
Richard F. Generelly, Kenneth Scott and *Joseph W. Morris*, for Amerada Petroleum Corporation.
Robert W. Henderson and *Richard F. Generelly*, for Hunt Oil Company, N. B. Hunt, Lamar Hunt, W. H. Hunt, Lyda Hunt-Margaret Trusts, Lyda Hunt-Caroline Trusts, Lyda Hunt-Herbert Trusts, Lyda Hunt-bunker Trusts, Lyda Hunt-Lamar Trusts, Secure Trusts, and H. L. Hunt.
Frederick T. Searls and *Malcomb H. Furbush*, for Pacific Gas and Electric Company.
Robert W. Henderson, for A. G. Hill, New Seven Falls Company, Lyda Hill Trust Estate and Albert Hill Trust.
C. Hayden Ames, for San Diego Gas Electric Company.
Samuel B. Ross, for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

This proceeding involves the most-favored-nation clauses in certain producer contracts executed prior to April 3, 1961.

Typically, as here, a most-favored-nation contract clause provides that if a purchaser of gas from a certain producer pays another producer in the same area a higher rate, the first producer may raise or escalate his rate to that purchaser correspondingly. The clause is said to be activated or "triggered" by the purchaser's paying the other producer a higher rate. But in order for "triggering" to occur, where (as here) the contract so provides, the producer filing the most-favored-nation rate increase must show that the other producer is the type of seller contemplated and produces in the area indicated in the contract, that the gas being purchased from the other producer is comparable gas, and that the rate being paid for it is "higher" in fact as well as in appearance. By showing that these and any other conditions precedent (to triggering) exist, the producer filing for the escalated increase shows that his proposed increase has the "contractual support" or consent of his purchaser; and the increased rate may be accepted for filing.[1] If he fails to show that these necessary conditions exist, his

[1] Thereafter, the producer must show that his proposed increase is "just and reasonable." The fact that his increase was filed because his most-favored-nation clause was triggered in no way eliminates his burden of proving his proposed rate economically justifiable.

filing is rejected as a contractually unauthorized, unilateral rate increase.[2]

"Artificial" rate increases contemplated by most-favored-nation clauses such as these—that is, increases based purely on contract provisions and not on cost or on other relevant economic grounds—are largely forbidden in contracts filed with us which were executed after April 2, 1961.[3]

Issues Presented

(1) Were the "favored-nation" escalation clauses contained in the contracts which the 15 respondents herein executed before April 3, 1961, "triggered" by El Paso Natural Gas Company's purchase at a "higher price" of gas from the West Texas Gathering Company? If they were, then the "contractual support" or consent of El Paso that must exist before the respondents' increased rates may be accepted for filing has been provided. Although El Paso paid West Texas a number of cents more per Mcf than the contracts between El Paso and the respondents herein called for, this would not constitute a "higher price" if the latter contracts are interpreted to take account of evidence which shows that the West Texas gas was of higher quality and usefulness to El Paso than respondents' gas.

(2) Are favored-nation or other "artificial" escalation clauses to be construed as being triggered by a rate increase that this Commission has rejected? This issue[4] is implicit in Superior's contention[5] that its rate increases, with one exception, were not based on the subject West Texas purchase, but on El Paso's purchases from Hunt Oil Company and Shell at increased rates that allegedly were triggered by the subject West Texas purchase. (In fact, Shell's proposed increases were based upon other increased rates of Shell itself that were allegedly triggered by the subject West Texas sale.)

Finally, there is the minor issue presented by the contention of the Hunt interest that inasmuch as they have filed renegotiated rates[6] which are lower than and in place of the favored-nation rates at issue here, the case is moot where they are concerned.

SUMMARY

By an order to show cause dated June 26, 1961, 25 FPC 1219, the issues herein were restricted to the question of whether or not respondents' contracts had been triggered; that is, whether they had the contract support that must exist before their proposed increases may be accepted for filing.

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[2] In *United Gas Pipe Line* v. *Mobile Gas* (1956), 350 U.S. 332, as modified by *United Gas Pipe Line* v. *Memphis Light, Gas and Water* (1958), 358 U.S. 103, the Supreme Court held that the Commission must reject any filing for a rate increase which is inconsistent with or not authorized by the basic contract between the parties.

[3] Section 154.93 of our Regulations incorporates Commission Orders 232, 232A and 242, which state that most escalation clauses which provide contractual consent to price increase unrelated to the producer's cost of service, are contrary to the public interest and that they will be treated as void with respect to any contracts executed after April 2, 1961. Contracts executed after April 1, 1962, which contain these forbidden types of escalation will be rejected for filing. The only exceptions are provisions changing a price (1) as reimbursement for increased taxes, (2) to a specific amount at a definite date, (3) once in five years consistent with applicable and non-controverted (*i.e.*, not "suspect") producer rates for the area.

[4] This issue was also raised obliquely but not specifically treated by the examiner: See Question No. 7 on page 512 of his decision, where he inquires whether suspended favored-nation increases must be refunded if the increases that triggered them are disallowed.

[5] Superior's Exceptions, pp. 3–4.

[6] With the exception of Superior Oil Company all respondents have renegotiated their contracts with El Paso to provide for increased rates, usually no more than fractionally lower than the favored-nation rates. These renegotiated rates have all been suspended subject to refund. Certain of the Hunt entity renegotiated rates are involved in Docket No. G–9065, recently remanded to the examiner by *Hunt Oil Company*, Opinion No. 365, issued October 17, 1962 (28 FPC 623). Others of the renegotiated rates have been consolidated with the Permian Basin area rate proceeding, AR61–1.

The examiner's decision dealt directly only with this question (issue (1) above)—that is, did the West Texas purchase serve to trigger *any* of these favored-nation clauses? This exact issue has for all practical purposes been previously litigated in the *Pure Oil* case, Opinion No. 341, 25 FPC 383, aff'd (7 Cir. 1962) 299 F. 2d 370. In fact, the increase sought here is based on the same El Paso purchase from West Texas that was held not to trigger similar escalation clauses in the *Pure Oil* case.

Our decision in *Pure Oil*, which we here reaffirm, is adequate authority to dispose of this issue. As is discussed below, the examiner properly held that *Pure Oil* is controlling, and that respondents fail to demonstrate that their gas is comparable to the West Texas gas, or that their favored-nation clauses have been triggered. He therefore concluded that respondents lack the "contractual support" necessary to permit their proposed increases to be filed. We adopt the examiner's decision, subject to the modifications later noted.

In regard to the second issue, we hold that we will not approve a rate increase based upon another rate increase which we have rejected. It would be inconsistent to deny the first increase and yet approve the later increase based upon the first.

Hunt's contention as to mootness is rejected. Since there was a time period between the effective dates of Hunt's favored-nation rates and its renegotiated rates, and since favored-nation rates are proposed for that period, the issue of triggering is not moot.

The procedural and factual background of this case is fully stated in the examiner's decision.

The Pure Oil Case

Pure Oil presents the same issue as that presented here: namely, whether the gas purchased by El Paso from West Texas is sufficiently comparable to respondents' gas to make the price El Paso paid to West Texas "higher" in fact [7] than the price El Paso paid to respondents. In *Pure Oil*, as here, the examiner admitted evidence which demonstrated that the West Texas gas was of such high quality and was available in such large volumes and high pressures, that it was not comparable to respondents' gas.

Pure Oil went on to find that artificial escalations such as favored-nation clauses "are contrary to the public interest." [8] But it did not declare such clauses "void" lest this result in voiding the contracts also; and in thereby making possible unlimited filings of unilateral rate increases, unrestrained by the *Mobile Gas* requirement that rate increases to purchasers with whom contracts exist must have the "contractual support" of the purchaser.

Shortly after this *Pure Oil* decision,[9] the regulations noted above [10] were issued to provide that most artificial escalations would be banned from contracts executed after April 2, 1961.

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[7] In *Pure Oil*, West Texas received 18¢ as against about 11¢ in the original contracts. Here, the original contract rates range from about 10¢ to about 14¢, and the favored-nation rate filed for is usually 16¢, with a few filings at 18¢.

[8] 25 FPC 383 at p. 388.

[9] The 7th Circuit affirmed the *Pure Oil* decision (1962), 299 F. 2d 370. The court commented that while contract interpretation is not within the Commission expertise, the Commission was correct there in holding that the "other pertinent factors" referred to in the contract clause (quoted at footnote 11 below) were not limited to those factors specified in the contract clause. And the court held that the determination that the West Texas gas has special peaking qualities, so that its price was not higher on a comparative basis, is a matter within Commission expertise.

[10] Note 3, *supra*.

The Contentions of the Parties

The contentions of the parties here are similar in most respects to those raised in *Pure Oil*. Respondents urged that the operative facts in the present case are not similar to those in *Pure Oil*, but they did not list any major differences. They merely stressed that *Pure Oil* is a different case and not controlling here. They argued that these favored-nation clauses are valid and unambiguous,[11] and that extrinsic evidence therefore may not be used to determine whether the price of gas sold under the West Texas contract is higher than the price of gas sold under respondents' contracts. To determine whether gas is comparable to gas sold under an alleged triggering contract, and whether the price of the latter gas is higher, respondents claim that it is sufficient to place the two rate schedules side by side, and to give "due consideration" to the differences specified in each contract. Applying this (their so-called "contract comparison" theory), respondents mentally summed up the contractual differences between their gas and West Texas'; found that they cancelled out, and concluded that their basic contract rates were lower by a few cents than the 18 cent West Texas contract rate. But respondents offered no quantification or specific computations in proof of this. They also argued that by initially "accepting" the increased filings, the Commission was estopped or barred by an unnamed principle comparable to laches from further questioning the justification for their filings.

The staff, supported by certain interveners,[12] rejected respondents' contentions. Staff emphasized that the rate schedules are not merely private contracts, but that they affect and are affected by the public interest and must be interpreted accordingly. Staff stressed that most of respondents' arguments regarding gas comparability were based on a vague use of a group of subjective judgments, and that they were unsupported by specific computation. Staff also argued that the favored-nation clauses here involved are too vague and uncertain for use in the administrative process, and that as parts of private contracts they must yield to consideration of public policy, and therefore should be denied effect under the primary jurisdiction doctrine. In any event, staff concluded, the West Texas gas was so superior to respondents' gas that the former gas was not "higher" in price in fact than respondents' gas, and that respondents' contracts therefore had not been triggered.

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[11] Pure filed for increased rates under contracts containing these favored-nation clauses, whose language is virtually verbatim with those in this case. The contract clause in the present case reads as follows:

> If, at any time or times after the date of this agreement Buyer shall purchase from any other seller gas from "dry gas" or "gas distillate" wells within one hundred twenty-five (125) miles of the town of Andrews, Andrews County, Texas, at a price per thousand (1,000) cubic feet higher than the price at the time payable hereunder, Buyer agrees that the price payable to Seller for gas delivered hereunder shall be immediately increased to equal such higher price paid to such other seller, and such higher price hereunder shall continue in effect so long as, but only so long as, any such higher price is paid to such other seller. In determining whether the price payable under such other contract or agreement is "higher" than the price payable under this agreement due consideration shall be given to the provisions of this agreement as compared with such other contract or agreement as to quantity and quality of gas, delivery pressures, gathering and compressing arrangements, provisions, regarding measurement of gas, including deviation from Boyle's law, taxes payable on or with respect to such gas, and all other pertinent factors.

[12] Particularly, the State of California, the Southern California companies and El Paso. The full list of interveners is set out in the examiner's decision, *infra.*, p. 511.

The Examiner's Decision

The Examiner [13] held that *Pure Oil* should be followed as a matter of *stare decisis*, noting that the "dominant operative facts and the questions of law applicable thereto [are] substantially identical to . . . the *Pure Oil* case." [14] He held the unusual qualities of the West Texas gas made it not comparable to respondents' gas, that the West Texas price therefore was not "higher", and that triggering did not occur. He also found that the subject favored-nation clauses are contrary to the public interest, because they are "inherently unreasonable, since there is no economic or other substantial justification for the increase" proposed thereby.[15]

Exceptions to the Examiner's Decision

Respondents reiterate their general position that the two gas purchases are comparable; that favored-nation clauses are valid; that rate contracts are personal to the parties and not subject to interpretation in light of public policy, even if ambiguous; that these were unambiguous and not open to interpretation by extrinsic evidence; and that having originally accepted respondents' filings, the Commission was now stopped from scrutinizing the increases proposed.

Staff re-emphasized the vagueness of these favored-nation clauses; and the failure of respondents to quantify their arguments that the two gas purchases are comparable. Staff also urged that favored-nation clauses in general were invalid; and it asserted that the fear that a flood of unilateral filings would result if such clauses are held invalid is largely imaginary.

Conclusions on First Major Issue

The examiner's decision, and the *Pure Oil* opinion upon which it is based fully dispose of this case. Respondents' presentations fail to meet the real questions present here.

(1) They fail to show any significant distinction between this case and *Pure Oil*.

(2) They fail to make a showing, based upon a factual comparison of the relevant gas purchases, that the price El Paso paid to West Texas was "higher" than the prices El Paso paid respondents.

(3) The argument that by "accepting" these filings the Commission later was barred from rejecting them for lack of contractural support has little legal basis.[16]

(4) The claim that favored-nation clauses are valid for all purposes is contrary to the Commission holding in Pure Oil, and to Section 154.93 of the Natural Gas Regulations.[17]

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[13] The Examiner who presided at the hearings herein (as well as in the *Pure Oil* case) died shortly after their termination. He was replaced, the Commission rejecting a motion to omit the intermediate decision procedure.

[14] Decision, page 520.

[15] Decision, page 521.

[16] The Supreme Court in *Mobile Gas* compelled the Commission to reject, for lack of contractual support, unilateral filings which had been "accepted" in a more complete sense than was true here. Aside from the difficulties of applying estoppel or laches against the Government, the question of contract support goes to the issue of jurisdiction and can be raised at any time. Furthermore, Section 154.101 of the Regulations under the Natural Gas Act provides that acceptance for filing is not necessarily approval.

[17] Both treat them as contrary to the public interest. In both instances the Commission declined to declare them void retroactively only because of a fear that a flood of unilateral filings, which would cause even greater injury to the public interest, would result.

(5) Respondents' claim that rate schedules are merely private contracts that are immune from public policy considerations to the extent that ambiguities in contracts subject to regulation cannot be resolved in favor of regulation in the public interest, has little support in Supreme Court or other decisions.

Triggering of Artificial Escalation Clauses by Disapproved Rates

Although the examiner found that Superior's contract clauses, like those of the other respondents, were not triggered by the El Paso purchase from West Texas—a finding we approve—Superior contends that the legality of its filings is not affected by that finding, because its increases were based on increased rates that El Paso paid to Hunt and Shell. But those increases, all of which were suspended and are subject to refund, were themselves based on the West Texas sale.

We have already found that those increases were not authorized by the contracts between El Paso, Shell, and Hunt. For that reason, we think that Superior was not entitled to collect higher rates under its contracts with El Paso.

Superior's contracts provide that in the event El Paso agrees to purchase gas from another seller at a price higher than the price provided in Superior's contract, "the price . . . payable to [Superior] . . . shall be immediately increased so that it will equal the price payable at the same time *under such other contract*, and such higher price shall continue in effect so long as, *but only so long as*, any such higher price is *payable* for gas by *Buyer under any such other agreement*." [Emphasis supplied.] It seems plain that since El Paso was not obliged to pay higher prices under its contracts with Shell and Hunt—as we found above—Superior could not claim an increased price under its contract. Accordingly, Superior's rate increase must also be rejected. *United Gas Pipe Line Co.* v. *Mobile Gas Service Co.*, 350 U.S. 332 (1956).

Any producer filing for an increase under a favored-nation clause of necessity has two hurdles to overcome in ultimately justifying the rate increase. First, his increase is dependent upon the validity of the rate which triggered his favored-nation clause. If the triggering rate is later found to be invalid or unreasonable in whole or in part, then any rate filing based on such triggering rate is without contractual justification to the extent the triggering rate is reduced. After establishing what rate is valid under the contract clause for the favored-nation increase, it must also be shown that such rate is just and reasonable. In sum, the validity of his filing is at all times subject to the ultimate determination of the validity of the triggering rate as well as the justness and reasonableness of the increased rate.

The Retroactive Amendment of the Hunt Favored-Nation Rates

A final minor issue is posed by the contention of the Hunt interests that since they have filed renegotiated rates lower than, and in place of, the favored-nation rates at issue here, the case is moot where they are concerned. However, while our orders of March 18, 1960 and June 2, 1960 in Docket No. G–18464 permitted the Hunts to substitute their renegotiated rate filings for the proposed favored-nation rates, the Hunt request to make the substitution fully retroactive was refused. Instead the substitutions were made effective only as of June 7, 1960 by our March 18th order and as of March 17 and 18, 1960 by our June 2nd order. This left a period of some months between the original effective dates of the favored-nation rates (October and December 1959) and the dates of the substitute filings. Even though the Hunts have refunded to El Paso the differences between their favored-nation rates and their renegotiated rates, they have not refunded the differences between the favored-nation rates and their originally

effective rates for this period. In any event, the triggering issue presented by this case is not moot for this period during which hunt's favored-nation rates were allegedly effective.

It seems appropriate that we add a word concerning the views expressed in the concurring opinion. It is there suggested that favored-nation clauses in producer contracts should be construed to have contemplated that a higher rate being collected by another producer in the area cannot be a basis for triggering until the higher rate is approved by this Commission. Such a construction of these clauses is inconsistent with their main purpose of placing the producer on a par with other producers selling to the same pipeline. Moreover, the effect of the concurring view would be to foreclose to such a producer the right to file under Section 4 of the Act for contractually authorized rate increases prior to Commission determination of just and reasonable rates for the area, thereby permanently depriving him of any opportunity to recover higher rates for this extended period of time even though such rates should ultimately prove to be just and reasonable.

We believe the use of indefinite escalation clauses of the type here involved is not in the public interest. The Commission has prospectively outlawed such clauses by Section 154.93 of its regulations. It has also encouraged the elimination of such clauses in many older contracts under the Second Amendment to our Policy Statement No. 61–1 and in the provisions of many of our producer settlements. However, to outlaw almost all such clauses retroactively, and by guise of giving the language a meaning exactly opposite to that which was clearly intended, would raise serious questions both of law and fairness.

The Commission further finds:

(1) The initial decision of the presiding examiner issued herein on July 24, 1962, should, except to the extent inconsistent herewith, be adopted by the Commission as its decision in this case, effective as of the date of issuance of this opinion and order. Except to the extent granted herein, exceptions to that decision and all other motions and appeals of all parties should be denied.

(2) Respondents' proposed increased rates as itemized in Appendix A to our Order to Show Cause, and as modified in the case of the Hunt interests by our orders of March 18 and June 2, 1960 in Docket No. G–18464, should be denied and are rejected for filing.

(3) The respondents should be required to refund to El Paso, with interest from the date of payment, all sums collected under and by reason of the proposed increased rate schedules referred to in paragraph (2) of these findings.

The Commission orders:

(A) The initial decision of the presiding examiner issued herein on July 24, 1962, is, except to the extent inconsistent herewith, adopted by the Commission as its decision in this case, effective as of the date of issuance of this opinion and order. Except to the extent granted herein, exceptions to that decision and all other motions and appeals of all parties are denied.

(B) Respondents' proposed increased rates as itemized in Appendix A to our Order to Show Cause, and as modified in the case of the Hunt interests by our orders of March 18 and June 2, 1960, in Docket No. G–18464, should be denied and are rejected for filing.

(C) Respondents shall, within forty-five (45) days from the date of issuance of this opinion and order, refund to El Paso, with interest at the rate of 6 percent per annum, the difference between the amounts collected from El Paso under the Rate Schedules listed in paragraph (B) above, and the rates and charges due and payable by El Paso to respondents under said Rate Schedules prior to the

filing and suspension of the proposed increased rates; and respondents shall bear the cost of such refunds.

(D) Respondents shall, within sixty (60) days of the date of issuance of this opinion and order, report to the Commission in writing and under oath the details of its calculations resulting in refunds ordered pursuant to paragraph (C) above, together with copies of releases from El Paso with respect to such refunds.

(E) Upon satisfactory compliance by respondents with the refund requirements of this opinion and order, the proceeding in this docket shall be terminated.

Commissioner Morgan *concurring*, filed a separate statement.

Commissioner Ross *concurring*, joined in the statement filed by Commissioner Morgan.

MORGAN, *Commissioner, concurring:*

I concur with the limited result reached here.

But this case stands as a lost opportunity. It presented the problem of how to interpret indefinite price escalation clauses, written before producers were made subject to regulation, which permit producers to increase their rates whenever another producer succeeds in establishing a higher rate.

I think it should have been decided on the ground that favored-nation clauses in contracts executed before April 1961 must be interpreted in a manner fairly accommodating the public's interest in reasonable rates as well as the producer's interest in collecting the highest rates permitted under the Act.

Favored-nation rate increases bear no necessary relation to the costs of the gas being sold under the original contract. They were never intended to. The clause is a relic of pre-regulatory days. It was designed and adopted as a general and generous means by which a producer sought to recover his investment, cover himself against any increase in costs, and benefit from any general rise in the price level which might occur over the life of his contract. As a result, favored-nation price levels bear no relation to "just and reasonable" rates.

Yet because the Act to which producers were made subject[1] leaves them free to negotiate their own contract terms; and because it says that companies may collect increased rates if they agree to refund the amount that exceeds the level later determined to be just and reasonable, since 1954 producers have merely filed their favored-nation rate increases with us, and have proceeded to collect rates subject to refund, many of which were and are economically unjustified.

These clauses are plainly contrary to the public interest.[2] Their use in producer contracts executed after April 2, 1961 is prohibited; and those contained in contracts executed before that date would be prohibited also, were it not for the apprehension that this would legally void some of the contracts themselves, and bring on a rash of contract replacement filings at high rates. But as we all know, producers were made subject to regulation because the operation of just such devices drove the price of gas to unjustified levels. In any event, we now must decide, in the public interest, how those clauses should be interpreted under the Act and under proper regulatory standards.

As applied (partially) after 1954, the Act had an immediate effect on those clauses entirely unforeseen when they were written. Now, when a favored-nation clause is triggered by a suspended rate being collected subject to refund,[3]

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[1] *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954).

[2] The Commission on three separate occasions has declared them to be ". . . undesirable, unnecessary, and incompatible with the public interest." It found that limited, five-year price redetermination clauses are enough to enable producers to adjust to changing economic conditions. See Order No. 232, issued March 3, 1961, 25 FPC 379; Opinion No. 341 in *Pure Oil*, issued March 3, 1961, 25 FPC 383, Order No. 232A, issued March 31, 1961, 25 FPC 609; and Regulations Sect. 154.93.

[3] Whatever the reason for its filing, a rate increase filed with us that exceeds the interim level indicated in our Policy Statement No. 61–1 is suspended. 24 FPC 820.

the producer whose rate is triggered collects his increase subject to possible reduction to the just and reasonable level of the triggering rate, when the latter is determined,[4] and to possible refund of any excess with interest.

This is illustrated by four[5] of the five Superior filings considered in this case. Here because of the 18¢ rate at which West Texas sold to El Paso allegedly was higher in fact that the rates at which Shell and Hunt sold to El Paso,[6] Shell and Hunt raised their rates to 16¢ and 18¢. Then—even though these increases were suspended for the statutory period and thereafter were collected subject to refund—Superior increased its rates to El Paso[7] to 16¢ and 18¢ because Shell and Hunt had done so! The result was that for almost the next two years, and *for no economically justifiable reason whatsoever*, Superior collected from 25 to 50% more for gas under those four schedules than under its prior rates. Yet Superior now must refund the entire increase, with interest, because the alleged triggering never really occurred.

Superior, however,—by persisting that its filings were ". . . justified by the Favored Nation clauses of its respective rate schedules,"[8]—raises the basic issue of whether escalation clauses can or should be construed to contemplate triggering by *any and all* price increases including those which are suspended and are being collected subject to refund.

The wording of most of these pre-regulatory clauses gives no indication whether it was the intention of the parties that the clauses would be triggered by suspended or unapproved rates which were, themselves, subject to subsequent reduction and refund.[9] So the question is, now that these clauses *have* been made subject to regulation, should they be construed under ordinary rules of contract interpretation as being triggered by higher unapproved rates that may include (refundable) excesses which it is finally determined the producer never had a right to collect; or should they be construed, where appropriate, as being triggered only by higher, finally-approved rates?

I believe that the latter is the proper interpretation. The rule for deciding this question is that all contracts, even the most private and personal, must be interpreted in the light of public policy.[10] Where the contract has been made subject to public regulation and is filed as a jurisdictional rate schedule having the force of law, the operation of its provisions is necessarily limited or confined by the provisions and purpose of public law and by considerations of public policy. Although a gas price contract is a matter for private agreement, *insofar as that contract operates as a public rate schedule*, we must resolve any doubts we may have as to the intent of that contract in a manner that accommodates, or at least does not supersede, the purpose and intent of the regulatory law, which is that the price of gas shall be limited" . . . to the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest."[11]

When the clause is construed as being triggered by higher, unapproved rates, there is an egregious impact on consumers. The inescapable consequence is that each higher, unapproved rate triggers an everspreading round of

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[4] Then the triggered producer also has to show whether the triggering rate, as reduced, is reasonable for him.

[5] Superior's FPC Rate Schedules Nos. 9, 30, 10, and 8.

[6] 10¢ and 14¢; raised to 16¢ and 18¢ in September and October 1959.

[7] 10¢ and 12¢; raised to 16¢ and 18¢ in April 1960.

[8] Superior's Exceptions, p. 19.

[9] If the clause expressly provides that it shall be triggered by higher suspended or unapproved rates, I would be constrained to so interpret it.

[10] See 3 Corbin on Contracts, 1960, Sec. 560 at pages 194–6; and 4 Williston on Contracts, 3d Ed., 1957, Sec. 626 at page 851 *et seq.*

[11] *Atlantic Refining Co.* v. *Public Service Commission*, 360 U.S. 378 at 388 (1959).

economically unjustified rate increases. As one producer escalation elevates another, we are inevitably confronted by an ever-rising price level;[12] an ever-increasing need for consumers to pay higher rates "subject to refund"; an ever-increasing backlog of administrative proceedings; and an ever-increasing contingent liability against the financial stability and solvency of producers. After lengthy delays, produced partly by an inflated backlog of such cases, the Commission determines what the proper rate level should have been; and refunds are made.[13]

But the damage is done: the price level was and remains raised. Of course, the refund requirement, as we have repeatedly explained to the courts and to Congress, is an ineffective means[14] of protecting the public against and compensating it for paying economically unjustified charges.[15] And the additional effects of this process upon contracts written during the period of escalation and suspension are not removed by the eventual refunds and reductions.

If this inflationary pricing practice occurred in any other sector of the economy, it would be met with vigorous "roll-back" movements.[16] Yet here it is considered acceptable because it takes place within the protective confines of a regulatory statute enacted to prevent inflationary practices and to protect the consumer from unjust rates! This, I submit, institutionalizes inflation through regulation. This is the interpretation that has been followed in the past; and this is the interpretation the majority perpetuates here.

I am convinced that this interpretation is improper. The increased-rate collection provisions of Section 4(e) should not be exploited in this manner; and it was never intended that they should be. They were placed in the Act because Congress felt that "companies should not be precluded by law from increasing the prices of their product *whenever that is the economically necessary means of keeping the intake and outgo of their revenues in proper balance . . .*" [emphasis supplied].[17] Yet the Commission's interpretation of these clauses treats those provisions as nothing more than a mechanism for the collection of economically unjustified rates based on the favored-nation clause—a clause repeatedly found "contrary to the public interest." This debases the statute.

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[12] In *Pure Oil* the increases claimed by Pure amounted to only $98,000 a year; but their cumulative effect would have been at least $18,000,000 a year! 25 FPC 383 at 389.

[13] More often than not—and in order to keep its contingent refund liability from becoming too swollen as one escalation is "pancaked" atop another—the company itself offers to settle and voluntarily to refund some stated proportion of the "excess" agreeable to the company and its customers.

[14] *See FPC* v. *Tennessee Gas Transmission Co.*, 371 U.S. 145, 31 U.S. L. Week 4029 (December 3, 1962); *United Gas Pipe Line Co.* v. *Memphis Light, Gas & Water*, 358 U.S. 103 at 119 (1958).

[15] The majority's answer to the problem (of how to prevent these clauses from lifting prices above the just and reasonable level required by the Act and holding them there for extended periods) is signally unsatisfying. They stress that after an economically unjustified rate goes into effect, and while it is being collected subject to refund, the producer will be required to show (1) that his rate actually was triggered, and if it was, then (2) he has to go through another proceeding to show that his triggered rate is just and reasonable.

True as all this may be, it utterly ignores the position in which the consumer is placed, the period for which he is held there, and the fate which befalls him while he is being held. This case itself shows how ineffectual that answer is. Here (1) it finally was found that the filings were never authorized. So the whole thing falls, and refunds eventually will be made—two years, at least, after collections started! And if the gas had been found "comparable," then (2) at some time in the future course of human events, we would have undertaken an additional proceeding to determine whether the favored-nation price level was just and reasonable. And in the meantime the companies would have gone on collecting the unjustified rate!

[16] See Economic Report of the President for 1962, page 87.

[17] *United Gas Pipe Line Co.* v. *Memphis Light, Gas & Water, supra*, at 113.

Inasmuch as the sole purpose of making producers subject to the Act was to prevent the price of gas from exceeding just and reasonable economic levels,[18] I believe that the purpose and public policy of the Act compels us, whenever possible, to construe favored-nation clauses as not triggered by higher rates unless and until those higher rates have been found economically justified.

It is true that we may permit a higher rate found economically justified to trigger these clauses; and it is true that we may permit a producer to collect, under a favored-nation clause so triggered, a higher rate subject to refund even though that rate has not been found economically justified for him (and even though there is little reason to believe that it will be). This is permitted to the extent that the Act preserves "the 'integrity' of private contractural arrangements for the supply of natural gas, (subject of course to any overriding authority of the Commission) . . ."[19] However, as the purpose of the Act is to insure that rates for natural gas "shall be just and reasonable," it is also true that a rate should not be permitted to trigger a widespread price increase unless it has first been found to be just and reasonable or compatible with the public interest.[20]

I therefore believe we should have here ruled that rate increases (in excess of our interim ceilings), which are based upon indefinite price escalation clauses such as those before us, may not take effect unless the (triggering) rates on which they are based have been found just and reasonable or in the public interest.

Adoption of such a policy would mean that the level and amount of favored-nation rates (in excess of our generous interim ceilings) hereafter collected subject to refund would be lower; and the moment when they become collectible would be deferred longer than presently is the case. Another advantage, conferred upon producers and consumers alike, would be to permit this Commission to concentrate its attention upon, and to treat with greater administrative fairness, those major cases which clearly pose the threat of triggering.[21] I further believe that under such a policy, producers whose rates are triggered by a rate thus found to be economically justified should be allowed to collect their increases after a one-day suspension period.[22]

Inasmuch as the Act was applied to producers in order to protect the public from unjust and unreasonable prices, I believe that if one interest here must defer to or be made compatible with the other, it is the producer's interest in collecting economically unjustified prices that must defer to the public's interest in just and reasonable rates.

In sum, I believe that these favored-nation clauses should be construed as being triggered by higher rates only if those higher rates have been found just and reasonable or compatible with the public interest; I believe that this interpretation should have been adopted at the outset of producer regulation; I believe we should adopt it now; and I believe that until we do adopt it, our efforts to

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[18] *Phillips Petroleum, supra,* at page 685.

[19] *United Gas Pipe Line Co.* v. *Memphis, supra,* at page 114. The language quoted was not addressed to "private contractual arrangements" found "undesirable, unnecessary, and incompatible with the public interest." Footnote 2, *supra.*

[20] *Cf. United Gas Improvement Co.* v. *FPC* (9 Cir., 1960), 283 F. 2d 817 at 824–5; *cert. den'd,* 365 U.S. 881 (1961).

[21] See, for example Opinion No. 369 (and dissent) in *H. L. Hunt, et al.,* issued November 30, 1962, 28 FPC 897, granting staff's motion to dismiss producers' rate increases, which would have led ". . . to the triggering of almost a million dollars a year in rate increases," on the ground that those producers had failed to meet their burden of proof under Sec. 4(e).

[22] Rates so triggered would still be subject to independent economic justification later.

restrict the price of gas "to the lowest possible reasonable rate" will remain suspect in the eyes of the consumer.[23]

The majority claim that the effect of the interpretation advanced here would prevent producers from collecting rate increases for an "extended period of time"—that is, until just and reasonable rates for the various pricing areas are determined. This misinterprets my position, for I have made it clear that important, above-ceiling rate increases involving triggering should be handled promptly and, if necessary, individually; and that favored-nation clauses may be activated after (but not until) the just and reasonable level of those triggering rates is determined. This does not "permanently deprive" a producer of his favored-nation rights. It merely holds that they must be *determined* as promptly as possible, and then *exercised* in a manner consistent with the public interest.[24] Specifically, because the purpose of the Act is to prevent the price of gas from going above economically justified levels, my interpretation merely holds that such clauses cannot be activated by rates that have not been economically justified. This is not the deprivation of a right; it is the regulation of a right in the public interest.[25]

But I am more disturbed by the majority's implication that hereafter, as in the recent *Slade* case,[26] the Commission will permit producers to collect their rate increases subject to refund, pending the far-off day when just and reasonable rates are determined in area proceedings. Most of those proceedings have not even been initiated! Regardless of the method that may be followed once area rates are established, that day is so distant that we cannot refuse to determine such a question in the interim. The Act at Section 4 (e) says this Commission must give rate increase questions "preference over other questions pending before it and decide the same as speedily as possible." And the reason for this, as we ourselves have said, is because "experience has shown that refunds do not afford full protection to consumers who ultimately pay the excessive charges."[27] Accordingly, to the extent that the aforementioned implication is responsible for the result reached by the majority, I must respectfully express my total disagreement.

Commissioner Ross joins me in this concurring statement.

INITIAL DECISION

FINDING THAT THE SALE OF NATURAL GAS TO EL PASO BY WEST TEXAS GATHERING COMPANY DOES NOT JUSTIFY PROPOSED INCREASED RATES AND CHARGES TENDERED FOR FILING BY THE RESPONDENTS, DISMISSING APPLICATIONS FOR SAID PROPOSED INCREASED RATES AND CHARGES, AND REQUIRING REFUNDS

(Issued July 24, 1962)

LANDE, *Presiding Examiner:* This proceeding is concerned with a special type of contract provision, frequently referred to in the industry as a favored-nation

[23] *Atlantic Refining Co.* v. *Public Service Commission, supra.*

[24] "It is hereby declared that the business of . . . selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation thereof . . . is necessary in the public interest." Natural Gas Act, Section 1.

[25] This interpretation is also consistent with the Fifth Circuit's recent ruling in the *Hunt* case—i.e., that we may not use our certificating power to deny producers their right to file for a rate increase. And I cannot reconcile the majority's position here with the assertions in the Commission's petition for rehearing in the *Hunt* case—i.e., that we can deprive producers of that right. (See Respondent's petition for rehearing en banc, dated August 1962, in *H. L. Hunt, et al., v. Federal Power Commission,* Fifth Circuit, Nos. 19065, etc., July 19, 1962, 306 F. 2d 334.) [Fifth Circuit reversed, 376 U.S. 515 (1964)].

[26] Opinion No. 376 in *Slade, Inc.,* Docket No. G–19986, et al., issued January 3, 1963, 29 FPC 11; Reconsideration Denied (two Commissioners dissenting), February 27, 1963, 29 FPC 408.

[27] Our brief to the Supreme Court in *FPC* v. *Tennessee Gas Transmission Company,* footnote 14, *supra.*

clause. When a pipeline company and a producer have a favored-nation clause in their gas sale contract, the pipeline company becomes obligated to pay to the producer the equivalent of any higher price which the pipeline company may subsequently pay another producer for comparable gas within a certain geographical area. The new purchase is the act which "triggers" the clause.

The 15 Respondents named herein (Respondents) support their proposed rate increases, directly or indirectly, upon such a favored-nation contract clause allegedly "triggered" by the sale of West Texas Gathering Company (West Texas) to El Paso Natural Gas Company (El Paso). Within about a year each Respondent tendered for filing proposed changes in rates and charges which were suspended by orders of the Commission, and upon motions duly filed under Section 4(e) of the Natural Gas Act, their rates were made effective subject to refund with respect to their FPC Gas Rate Schedules identified in the Appendix hereto and on the dates indicated therein.

Certain of the increased rates and charges proposed by the Respondents were embraced in other proceedings pending before this Commission at the time the Show Cause order was issued. Respondents cited this fact and other considerations in their various motions objecting to a hearing of their cases in the instant proceeding. Noteworthy among said motions are: Motions to dismiss filed by Shell Oil Company (Shell) on July 11, 1960, by Hunt Oil Company, N. B. Hunt, Lamar Hunt, W. H. Hunt, H. L. Hunt, Lyda Hunt-Margaret Trusts, Lyda Hunt-Caroline Trusts, Lyda Hunt-Herbert Trusts, Lyda Hunt-Bunker Trusts, Lyda Hunt-Lamar Trusts (Hunt Entities) on July 12, 1961, and by Sun Oil Company (Sun) on July 19, 1961; and Motions of the Superior Oil Company (Superior) filed on July 19, 1961, pleading that it be permitted to present its case without reference to the Pure Oil record in Docket No. G–17930 and, among other things, that Docket No. G–20075 not be consolidated for hearing. The foregoing motions were denied by the Commission by orders issued herein on July 21, 1961, 26 FPC 185 and September 15, 1961.

By order issued July 21, 1961, El Paso, Pacific Gas and Electric Company, Amerada Petroleum Corporation, Southern California Gas Company, Southern Counties Gas Company of California, and San Diego Gas Electric Company were permitted to intervene. The Public Utilities Commission of the State of California filed a notice of intervention on July 11, 1961. By order, issued August 4, 1961, the Hunt Entities, A. G. Hill, Lyda Hill Trust Estate, Albert Hill Trust and The New Seven Falls Company were also permitted to intervene.

The record in the instant proceeding reports the testimony of 11 witnesses presented by Respondents, El Paso, and the Staff and comprises 1962 pages of transcript, 43 exhibits and 50 items incorporated by reference. The hearing began July 24, 1961, and subsequent to recesses was concluded on November 20, 1961, after 13 trial days. The initial briefs of Respondents were filed on March 1, 1962; reply briefs on March 29th, and the final briefs of Respondents on April 19, 1962.

On January 10, 1962, following the death of Presiding Examiner Glen R. Law, the El Paso Natural Gas Company filed a motion moving that the intermediate decision procedure be omitted in this case pursuant to paragraph 1.30(c) of the Commission's Rules of Practice and Procedure and that the five-day filing requirement set forth in subpart (3) of said paragraph 1.30(c) be waived, that the Commission cause the record herein to be certified, that final decision of this matter be rendered by the Commission, and for such other relief as may be just and equitable.

This motion was opposed by Superior on January 16, 1962, by Hunt Entities on January 18, 1962, and by Sun on January 19, 1962, and on February 7, the

Commission issued an order denying the motion to omit the intermediate decision procedure. By a supplemental designation of Presiding Examiner dated May 21, 1962, Allen C. Lande was designated herein to succeed the late Glen R. Law, with power and authority to do and perform all of the duties and responsibilities of the Presiding Examiner yet remaining to be done including the preparation, service and filing of the initial decision and the certification of the record herein.

Questions Presented

The various parties to this proceeding worded the issues herein differently, depending on their respective positions. Pertinent questions presented are:

1. Did the purchase of natural gas by El Paso from West Texas constitute the condition precedent which would cause the favored-nation clauses to become legal justification for the tender and unconditional acceptance for filing of the subject rate increases.

2. Can the Respondents' favored-nation provisions be triggered on an unknown future rate such as the interim rate of 18 cents per Mcf, which is revisable under the terms of the contract.

3. Whether the favored-nation clauses in the Respondents' contracts are ambiguous.

4. Whether alleged activation of the favored-nation clauses in the Respondents' gas well contracts is supported by the record.

5. Whether the favored-nation clauses in residue gas and casinghead gas contracts are activated by a contract relating to gas-well gas.

6. Whether the favored-nation clauses of casinghead gas and residue gas contracts can be activated by higher prices paid to the same producer.

7. Whether favored-nation increases collected subject to final disposition must be refunded if the higher prices upon which they are based are disallowed.

8. Whether the favored-nation clauses were intended to be activated by purchases from a gas gathering company.

9. If not, does the Commission have power to grant relief in this or any other favored-nation clause proceeding.

10. Why, in view of the record in the recently finalized *Pure Oil* case, the Commission should not find that no triggering had occurred and why Respondents should not be ordered to make refunds.

11. If so, what is the exact nature and extent of that relief and, in this connection, what is the effect of various "validating" filings made by the Respondents.

12. Should the filings identified in the Appendix hereof be severed from other proceedings.

Positions of Respondents

Although the positions adopted by the Respondents are by no means identical in all respects, common views are held at least with respect to certain issues. All denied the applicability to the facts in this proceeding of the Commission's decision in the *Pure Oil* case, Docket No. G–17930, 25 FPC 383. On the fundamental favored-nation clause activation issue presented by this case, all contend that their respective clauses were validly and legally activated. They further agree that determination of this question depends solely upon a comparison of contract provisions, and that since these clauses are presumed in no way ambiguous, extrinsic evidence cannot properly be received to aid in construing them. They uniformly insist that factors extrinsic to the contracts cannot be considered in determining whether or not the price paid by El Paso, which allegedly activated their particular favored-nation clauses, was in fact higher than the price which El Paso was paying them.

Shell contends that as for those favored-nation filings made by it under casinghead and residue gas contracts based upon the price paid by El Paso to West Texas for gas-well gas, the favored-nation clauses refer simply to "gas," and that therefore such residue and casinghead contracts can be triggered by a purchase of gas-well gas. Shell also in three instances made favored-nation filings based upon "higher" rates being paid to it by El Paso under other Shell rate schedules. As for those favored-nation filings made upon the basis of "higher" rates being collected subject to refund by other Respondents herein, which "higher" rates were themselves the product of a favored-nation increase based upon El Paso's purchases from West Texas, Sun and Superior contend that the reason why these "higher" rates were paid is immaterial to the validity of their filings based upon them. Sun further insists that if these "higher" rates were subsequently disallowed by the Commission and refunds thereof ordered, Sun would not be required to make similar refunds.

Position of El Paso

El Paso's position in this proceeding is diametrically opposed to the Respondents' positions. El Paso contends that the favored-nation clauses are ambiguous; that resort to extrinsic evidence must be had to properly construe them; that the extrinsic evidence clearly establishes that the Respondents' favored-nation clauses were not triggered; that residue and casinghead gas contracts cannot be activated by a contract relating to gas-well gas; that a producer such as Shell cannot validly file for a favored-nation increase based upon rates for other gas being paid to it; that favored-nation clauses were not intended to apply to pipeline companies such as West Texas; and that all of these favored-nation filings, whether based directly or indirectly upon the El Paso-West Texas transaction, must be disallowed and refunds of the amounts collected thereunder ordered.

Position of the Southern California Companies

The Southern California Companies take the position that none of the subject rate increases are contractually authorized; that all of the increases should therefore be dismissed or denied; that none of the "validating" filings made by the Respondents are effective to change the foregoing result; that the Commission possesses ample power to give complete relief in this proceeding; that nothing which has occurred or failed to occur in the past bars the Commission from exercising that power.

Position of the State of California

Respondents have failed to carry the burden placed upon them by the order to show cause in this proceeding. As in the *Pure Oil* case, the evidence shows that their favored-nation clauses are triggered only if El Paso pays a higher price to another producer. West Texas is not a producer. But beyond that, as in the *Pure Oil* case, the evidence proves that the West Texas price is not higher than Respondents' prices, and that there was no triggering under their contracts. The situation here being indistinquishable from the situation of the producers in the *Pure Oil* case, the Commission must, in ruling upon the order to show cause, decided the issue against the Respondents in all matters and particulars. Even independently of the *Pure Oil* decision. Respondents have not shown that their favored-nation clauses have been triggered, either directly or indirectly.

Most important, there never existed any lawful basis for Respondents' filings. The favored-nation clauses which support the filings are derogatory of the public interest and void in this regulatory setting.

Position of Other Interveners

Amerada Petroleum Corporation's (Amerada) position corresponds with that of Respondents. Interveners, A. G. Hill, Lyda Hill Trust Estate, Albert Hill Trust and The New Seven Falls Company have a community of interest with the Hunt Entities and appear to take a position corresponding with that of the Respondents outlined above, except for certain minor modifications.

Position of Staff Counsel

The West Texas gas has unique quantity, quality and delivery pressure features, which make it more valuable than the gas supplied by any one of the Respondents; therefore, West Texas' price is not "higher" than the underlying rates of Respondents and no triggering has occurred. Respondents cannot properly compute comparative values of "higher" prices of gas by using the terms of their own contracts. Respondents failed to prove that the West Texas contract rate triggered their favored-nation provisions. The Commission has already determined that West Texas is not a dummy corporation under the control of El Paso; therefore, Respondents cannot use the price paid by West Texas to its suppliers as the price triggering its favored-nation provisions.

Respondents' own testimony demonstrates that their favored-nation contract clauses are too vague and indefinite. The Commission should not go beyond making an inspection of the uncertainty of the terms for the purpose of determining whether they are fit for rate making. The power of primary jurisdiction reposed in regulatory bodies buttresses the principle that private parties cannot cause enforcement through the Commission of privately made contracts so as to diminish the Commission's jurisdiction.

Respondents' filings should be dismissed and appropriate refunds ordered.

The Contested Contract Clauses

Each of the 15 Respondents in this proceeding is an independent producer of natural gas subject to regulation by the Federal Power Commission pursuant to the provisions of the Natural Gas Act, 15 U.S.C. § 717 *et seq.* Each produces natural gas in the Permian Basin of west Texas and southeast New Mexico, and each sells gas thus produced to El Paso under one or more contracts duly filed as rate schedules with the Federal Power Commission.

Each of the Respondents' contracts in this case contains a so-called favored-nation clause. All of such clauses are of the same type in that all are two-party favored-nation clauses which provide in essence that in the event El Paso pays any other producer within a designated area a price higher than it is paying to the particular producer, it will increase the price to the latter to the same amount. This assumes that the price being paid to such other producer is being paid for gas of like or similar quality and that all other pertinent factors encompassed in purchasing of gas from such other producer are substantially similar to the same factors being utilized with respect to the producer party to the contract.

Favored-nation clauses were first used extensively by El Paso in late 1947. El Paso had more than 750 favored-nation contracts with producers in the Permian Basin of western Texas and New Mexico when it filed a complaint and petition for issuance of declaratory order in *El Paso* v. *Amerada Petroleum Corporation, et al.*, Docket No. G–18900, July 6, 1959. El Paso's petition requested a judgment by the Commission to the effect that, among other things, the spiral escalatory provisions contravene public policy, that the purchase by El Paso from West Texas does not constitute a "purchase" of gas within the

meaning of the favored-nation provisions and that filings on the basis of indefinite escalation clauses, including favored-nation clauses, be rejected by the Commission. This proceeding had not been set for hearing when El Paso renegotiated its contracts with over 400 producers so as to eliminate the favored-nation clauses in consideration of agreements for limited increased prices.

On various dates in 1959, each of the Respondents herein filed with the Federal Power Commission a notice of change in rates under its respective rate schedule or schedules increasing the price of gas produced by it in the Permian Basin and sold to El Paso. In each instance the filing was made pursuant to the claimed activation of the favored-nation clause in the particular contract between the Respondent and El Paso. Each Respondent alleged that favored-nation clause activation occurred as a result of the purchase of gas-well gas by El Paso from West Texas pursuant to a contract dated January 1, 1958, and filed with the Commission as West Texas Gathering Company's FPC Gas Rate Schedule No. 1. El Paso protested each of these filings as having been made unilaterally and without contractual assent. All were suspended by the Commission, and thereafter the increased rates thus proposed were permitted to be collected subject to refund. Pertinent data concerning these filings are set forth in the Appendix attached hereto.

In addition to the above, certain of the Respondents at other times in 1959 and 1960 filed notices of change in rates under other rate schedules also involving sales to El Paso of gas produced in the Permian Basin. Again each filing was made pursuant to the claimed activation of the favored-nation clause in the particular contract between the Respondent and El Paso, but in these instances the alleged activation occurred as a result of a "higher" price being paid by El Paso to the same or to another Respondent, which "higher" price was in turn the result of a favored-nation increase based upon El Paso's purchase from West Texas and being collected subject to refund. Again El Paso protested these filings, and again, they were suspended by the Commission and thereafter the rates proposed were permitted to be collected subject to refund. Pertinent data concerning these filings are set forth in the attached Appendix.

With the exception of Superior, all of the Respondents in this proceeding have subsequently renegotiated their Permian Basin gas purchase contracts with El Paso. By this renegotiation the favored-nation clauses were deleted from the Respondents' contracts, the terms of the agreements were extended, new acreage was dedicated in some instances and prices higher than the prior contract prices, but generally lower than the favored-nation rates at issue in this proceeding, were agreed upon. The new rates negotiated with Claude E. Aikman and Shell Oil Company were finalized by agreements dated October 26, 1959, to become effective as of January 1, 1960. A similar effective date was provided in the amendatory agreements entered into with Sun Oil Company. The Hunt Entities, however, filed the amendatory agreements which they entered into with El Paso as substitutes for their previous favored-nation filings, and made refunds to El Paso of the difference between the higher favored-nation rates and the renegotiated rates.

On June 26, 1961, 25 FPC 219 the Commission ordered Respondents to show cause why their proposed favored-nation rate increases to El Paso Natural Gas Company should not be denied and refunds made. Respondents have 35 favored-nation contracts pending, all involving sales to El Paso from gas fields in the Permian Basin area. The resulting increases to the purchaser total more than 1.8 million dollars annually. It is estimated that such rates collected subject to refund and in issue in this proceeding would total about two million dollars.

The Pure Oil Case

The favored-nation clauses in issue are similar to those contained in the contracts between Pure Oil and others and El Paso, the increases in which were denied by the Commission on March 3, 1961, 25 FPC 383. The Commission denied the Pure Oil increases on the ground that they had not been triggered by El Paso's purchase of gas from West Texas at a higher price. The increase proposed by the 15 Respondents herein are based on the same "triggering" action as Pure Oil's. The Commission's order in effect directs the Respondents to show cause why their filings should not be treated the same as those in the *Pure Oil* case.

The facts developed in the instant proceeding are very similar to those determined by the Commission and the Court of Appeals in the *Pure Oil* case. It will be helpful to highlight some of the pertinent features of the *Pure Oil* case.

On January 30, 1959, Pure Oil tendered for filing three proposed increases in rates and charges upon the basis of alleged activation of favored-nation clauses by reason of the same sales by West Texas to El Paso. Pure Oil's proposed increased rates were suspended and made subject to a public hearing. Pure Oil claimed in substance that West Texas is a dummy corporation under the control of El Paso and indistinguishable from it except for the corporate veil. Pure Oil thus alleged triggering of the gas on an individual supplier to West Texas. The Commission issued subpoenas *duces tecum* upon El Paso and West Texas officials for relevant documents and ordered depositions taken. This ancillary proceeding became part of the record in the *Pure Oil* case and the Commission held that there was no foundation for the contention that West Texas was El Paso's dummy subsidiary. After lengthy hearings, exchange of briefs and oral argument the Examiner who presided in that proceeding ordered the rejection of the increased rate filings. He concluded that the clauses could be triggered only by El Paso's purchases from other producers and not by a purchase from a nonproducer, West Texas. Secondly, he concluded that the usefulness of the West Texas gas for peaking purposes was a "pertinent factor" within the meaning of the comparability provision of the favored-nation clauses and that, giving due consideration to this unusual property, the West Texas price was not higher than Pure Oil's price. The Commission specifically agreed with the second of the Hearing Examiner's findings. The Commission held, among other things, that the favored-nation clauses in Pure Oil's above-identified rate schedules and contracts had not been activated. Pure Oil obtained court review of the Commission's decision. On February 26, 1962, the Court of Appeals affirmed the Commission, 299 F. 2d 370. Pure Oil's proposed increased rates and charges tendered upon the basis of its favored-nation provisions had become effective subject to refund of August 2, 1959.

Consistent with its findings in the *Pure Oil* case, the Commission amended its regulations to prohibit, effective April 3, 1961, the use of indefinite escalation provisions in new producer contracts (Order Nos. 232 and 232A, 25 FPC 609). On April 25, 1962, the U.S. Court of Appeals for the Fifth Circuit denied Sun's petition to review said order, 304 F. 2d 293 [Companion case at 304 F. 2d 290.]. A petition for *certiorari* is pending. [Denied, 371 U.S. 861.]

The Testimony

The Respondents stated in general that the price El Paso is paying West Texas is "higher" than the Respondents' pre-escalation rates by the number of cents per Mcf of increase in rates they have filed for in the instant proceedings;

that the correct method for determination whether the West Texas price is "higher" calls for side-by-side comparisons of the West Texas rate schedule with each of Respondents' rate schedules; that this process does not require arithmetic comparisons but that the equating of "contract provisions" by the judgment of company witnesses should, and does, show a precise difference in cents per Mcf between the Respondents' underlying rates and the 18.0 cent interim rate for sales by West Texas to El Paso. They presented testimony on the general theory of rate schedule construction, which they call "contract comparison." The witnesses said that they placed the West Texas rate schedule and a rate schedule of a Respondent side by side, examined the provisions of each, did a mental summing-up of the plusses and minuses attributable to the differences in named "factors," treated these with "due consideration" and arrived at their decisions that the Respondents' rate schedule had been triggered by the sale of the West Texas gas. With regard to the phrase "all other pertinent factors" the company witnesses said that this applied only to "factors" and things named in the rate schedules, but not to data concerning deliverability and similar knowledge which could be learned only from testimony. Respondents' witnesses conceded that differences exist in values of "factors" in their various rate schedules as compared with West Texas' Rate Schedule No. 1, but contended that in some instances these differences favored the Respondents and in other instances favored El Paso; that all such variations tended to cancel out to zero; that this left a clear justification for their filings as demonstrated by the difference between the 18.0 cent price tag for West Texas gas and the approximate 10.5 cent price tag for Respondents' allegedly equivalent gas at the underlying rates.

El Paso presented five witnesses, who testified that casinghead and residue gas are inferior from an operational standpoint because El Paso cannot "swing" such gas, use it for peak covering purposes, nor utilize the sources as storage. Almost all of the gas purchased from West Texas comes from the Emperor Field which gives it a high value for El Paso's operations because the gas is equivalent to sizable storage with the required high deliverability; the contract with West Texas allows El Paso to purchase large volumes of gas on a day-to-day basis, and also gives it a large amount of system peak covering capacity, e.g., during the year 1959, El Paso's low day was approximately 43 million cubic feet and its peak day was approximately 325 million cubic feet from West Texas; the location of the gas from the Emperor Field can offset deficiencies which may occur from practically any source of supply in the Permian Basin; and El Paso has acquired the equivalent of storage in exactly the optimum point on its system.

The Staff presented one witness who summarized the details of Respondents' favored-nation clauses and compared the contract provisions in Respondents' rate schedules with those in the alleged triggering rate schedules in respect of the "factors" named in the favored-nation clauses. The Staff also introduced data showing the gross sales of gas under Respondents' rate schedules involved herein as compared with those under the West Texas rate schedule. Because the Commission's Show Cause order made the *Pure Oil* record and Opinion No. 341 the reference of said order, the Staff witness summarized the details of Pure Oil's favored-nation clauses. The Staff's case also compared the contract provisions in Pure Oil's rate schedules with those in West Texas' rate schedule with respect to the "factors" named in the favored-nation clauses.

Regulatory Considerations

Respondents' favored-nation clauses contain features of concern to the public interest. The sellers' prices are subject to triggering should El Paso pay any of

the producers a higher price. The contract does not require economic justification for the increase. The rate does not necessarily have to be "fair and reasonable" under the recognized standards. Under Respondents' interpretation, increases whether excessive or not would be permitted to take effect, and the eventual rate adjustments would be delayed.

The record clearly demonstrates that favored-nation clause issues are complex and give rise to a multitude of controversial contractual provisions. This in turn places on the Staff of the Commission an undue administrative burden. Respondents contend that in face of rising trends in costs, an unchanged gas price would result in substantial liquidation. This contention was dealt with by the Commission in the *Pure Oil* case where it stated that:

> Assuming that indefinite escalation clauses in producer contracts had some justification years ago, when a lack of purchaser outlets and lack of consumer demand forced prices to abnormally low levels, this justification no longer exists today, when purchasers of gas are numerous, consumer demand is strong, and buyers are competing eagerly for available supplies of gas. In our judgment, in the light of continuing increases in the price of gas in recent years and the present high level of prices, escalation clauses such as Pure's have by now outlived whatever economic function they may have had. [25 FPC 383 at page 391]

The favored-nation clauses in Respondents' contracts are no longer consistent with the public interest, and therefore they must not be encouraged in a regulatory setting.

The enforcement of producer-pipeline contracts as embodied in filed rate schedules is not a right personal to the parties. Under the Natural Gas Act the consuming public is entitled to protection. The Supreme Court has consistently held that it is the purpose of the Natural Gas Act "to protect consumers against exploitation at the hands of natural gas companies." *F.P.C.* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1 (1961); *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944). Respondents contend that the Natural Gas Act precludes the Commission from seeking to modify practices that would be permissable under general principles of contract law. This is contrary to the Commission's clear power to find existing contracts affecting rates to be unjust or unreasonable. Section 5(a), 15 U.S.C. 717d(a). Clearly, if a gas sales contract involved in an application for a certificate of convenience and necessity includes provisions against public policy, the Commission would not be compelled to grant such a certificate. It may condition the certificate upon removal of provisions contrary to public policy. *Texaco, Inc.* v. *F.P.C.*, 290 F. 2d 149 (CA5). The Commission has the same power in an increased rate proceeding, *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332. The cases cited by Respondents fail to support the proposition that prospective contract terms are immune from a determination by the Commission that they are contrary to public policy.

In *Atlantic Refining Co.* v. *Public Service Commission*, 360 U.S. 378, the Supreme Court held that in issuing certificates the Commission had an obligation to consider the initial price to be charged for the proposed service and, if it issued a certificate, to impose price conditions if the initial price was excessive. Since the prices proposed by the producers are fixed by contract, such a price condition results in a contract modification. In the *Texaco* case the Court affirmed the Commission's imposition of price conditions upon issuance of producer certificates. And in *Mobile*, as the Court observed in the *Texaco* case, *supra*, the Supreme Court did not immunize rate contracts from Commission review or control. The court recognized that if rates could be filed they were subject to paramount powers of the Commission. Almost invariably when the Commission reduces natural gas companies' rates it affects a rate which is con-

tractually authorized. The price provision of a contract is of utmost concern to the parties. In rate cases pipeline companies have numerous contracts with the distributors and, yet, in the Section 5(a) rate cases the Commission orders changes in prices, delivery terms, etc. As pointed out above, such regulatory action has been upheld by the courts. Under the doctrine of primary jurisdiction a private interest in favored-nation contracts must give way to public policy. If Respondents' favored-nation clauses do not serve the public interest under the Act, they should be accorded no force, though of course they may remain in the rate schedules on file with the Commission. If the contracts which the Respondents have made with El Paso prove to be so economically improvident as to endanger the continuity of supply, Respondents have an avenue for relief under the Act. *F.P.C.* v *Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

Favored-nation clauses may not necessarily be against public interest *per se*. They undoubtedly serve a useful purpose in their time. It is conceivable that under certain circumstances an escalation clause is proper. For example, when it takes automatic notice of valid changes in cost to reflect a new "fair and reasonable rate" based on all data recognized pertinent to such pricing. However, it appears to be contrary to public policy to approve the new tariffs herein under consideration because of the particular facts developed in the record. Respondents did not fully meet the burden of proof prescribed in Section 4(e) of the Act. To be sure, an attempt was made to put in the record a general statement that "value of service" jusified the increase. However, Respondents chose to place basic reliance on the triggering affect of the favored-nation clauses. This they did without proper consideration of the "fair and reasonable" level of the rate increases.

Discussion of Contentions

The Respondents, as well as the other parties to the proceeding, stress various single considerations which in their opinion are of sufficient weight to justify a decision in their behalf. None of said contentions are by themselves of sufficient weight to be controlling. The decision in the instant proceeding cannot properly rest on the disposition of any such single contention made. The decision will necessarily reflect the aggregate consideration of all of the contentions made by the Respondents, and be evaluated in light of the counterarguments made by the other parties herein.

When the parties herein entered into the contested contracts apparently they did not foresee subsequent developments. They did not envision a difference of opinion whether a gathering and transportation company such as West Texas is to be considered a seller within the meaning of the favored-nation clause. They did not anticipate controversies pertaining to dry gas as compared with casinghead gas. The type of gas and the pressure consideration was not focused upon either. Now the parties seem to be beyond reconciliation. Respondents claim that the contracts are sufficiently clear; that the absence of specifics merely warrants the application of general contract provisions, a matter for resolution under their respective state contract laws. The interveners and the Staff claim that if the parties had envisioned current developments the contracts would have been written differently; that furthermore, contractural provisions must not impair the regulatory discretion and responsibility of the Commission.

Respondents claim that "acceptance for filing" by the Commission created a status which is *res judicata;* that a principle comparable to laches estops the Commission's surveillance of these rates. The other parties argue that the standard of just and reasonable rates by which the Commission is bound extends to the legal justification for tender and acceptance of changes in rates and charges. *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 at 347.

The presentation made by the Respondents herein is essentially the same as the one made in the *Pure Oil* case, though much effort was exerted to make the arguments appear different. However, the differences are not truly substantive. Respondents spent much time highlighting some minor distinctions while the other parties attempted to counter such distinctions. Respondents did not undertake to establish that the proposed increases in charges result in "fair and reasonable rates," though they contended that the value of the service justifies the price increase. Respondents in effect placed utmost reliance on a different interpretation of the contract provisions. The Respondents herein contend that their favored-nation clauses are not ambiguous. The other parties contend that the contract provisions are susceptible to at least two interpretations. They point out that the favored-nation contracts in issue have the following provision:

> * * * due consideration shall be given to the provisions of this agreement as compared with such other contract or agreement as to quantity and quality of gas, delivery pressures, gathering and compressing arrangements, provisions regarding measurement of gas, including deviation from Boyle's law, taxes payable on or with respect to such gas, and all other pertinent factors.

The language "all other pertinent factors" clearly may refer back (1) to the clause "due consideration shall be given to" and, possibly (2) to the clause "the provisions of this agreement as compared with such other contract or agreement as to." On the first interpretation, which the Commission and the Seventh Circuit adopted, we should consider all pertinent factors regarding the sales, whether or not set forth in the contract; on the second, which Respondents advance, just the provisions of the contract themselves are pertinent. Respondents seek to support their interpretation by reference to the fact that no "and" precedes "taxes payable," thereby allegedly giving rise to an inference that all of the phrases, including the final "all other pertinent factors," are in a single parallel series.

On the other hand, the first interpretation can even more easily be supported by noting that the language, "provisions regarding measurement," does not fit into the series which begins with "quantity and quality," but rather, because of the reintroduction of the term "provisions," appears to stand independently. Accordingly, the following two phrases, including the crucial one, are similarly independent of "provisions of this agreement."

That the first interpretation of the contracts is permissible seems to be the opinion of the Commission and the Seventh Circuit Court in the *Pure Oil* case. Query, how much weight should be given herein to the *Pure Oil* decision.

The support presented by Respondents for their favored-nation filings of proposed increased rates and charges appears to rest, directly or indirectly, upon the same operative facts as did the companies in the *Pure Oil* case. It appears that should the legality of the favored-nation increases proposed by the Respondents herein be tested upon the limited issue of whether or not the condition precendent for activation of the provisions of their contracts had occurred by reason of the West Texas sale of gas to El Paso, the dominant operative facts and the questions of law applicable thereto would be found substantially identical to those of record for the increased rates reviewed in the *Pure Oil* case. Thus the Commission's findings and orders here should be consistent with those issued in that proceeding.

The doctrine of *"stare decisis et non quieta movere,"* to stand by precedents and not disturb settled points, is not inflexible or so imperative as to require perpetuation of an error. However, departure from a Commission policy declared is justified only upon substantial grounds and the force of the rule depends upon the nature of the question to be decided and the extent of the dis-

turbance of rights and practices which a change may create. The Commission pointed out that the doctrine of *stare decisis* has applicability even in the field of rate making. In *Panhandle Eastern Pipe Line Co.*, 13 FPC 1570 at page 1573, the Commission held that:

> * * * While we do not take the position that a form of tariff once promulgated by us cannot be changed where facts and circumstances warrant, such changes must be supported by substantial evidence of significant facts and circumstances which would warrant our reconsideration. Mere allegations are insufficient.

Adherence in this proceeding on a *stare decisis* basis to the legal and regulatory principles established in the *Pure Oil* case will not deprive the Respondents of due process.

Summary

The Commission has primary jurisdiction to hear and decide what is in the public interest concerning jurisdictional sales of gas. Respondents failed to discharge their burden of proof and show that their "favored-nation" clauses conform with the criterion of public interest. Two-party favored-nation clauses in Respondents' contracts with El Paso, and indefinite escalation clauses generally, are contrary to public interest. Respondents' favored-nation clauses are contrary to public interest in that they are by their nature and in their effects inherently unreasonable, since there is no economic or other substantial justification for the increase. Pricing practices appropriate to other commodities and businesses, which are either unregulated or are subject to type of regulation unlike that provided by Natural Gas Act have little applicability in determining proper pricing practices for the regulated producer segment of the natural gas industry. Escalation clauses such as appear in Respondents' contracts have by now outlived whatever economic usefulness they may have had. Evidence does not establish that El Paso set up West Texas as a "dummy" corporation to defeat activation of favored-nation clauses in Respondents' contracts. Ambiguities as to language in Respondent-El Paso contracts should be resolved so as to promote objectives of regulation and public interest. The price paid by El Paso to West Texas is not "higher" than the Respondent prices, within the meaning of the escalation provisions, so there has been no escalation of Respondent prices.

FURTHER FINDINGS AND CONCLUSIONS

Upon the facts in evidence, together with the pleadings and the briefs of counsel, it is further found and concluded that:

(1) Respondents, independent producers engaged in the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial and other uses, are "natural-gas companies" within the definition of that term contained in Section 2 of the Natural Gas Act.

(2) Respondents sell natural gas to El Paso Natural Gas Company (a Delaware corporation and a natural gas company operating an interstate transmission pipeline) for resale in interstate commerce under contracts filed with the Commission as Respondents' Gas Rate Schedules specified in the Appendix hereto.

(3) Respondents' said gas rate schedules contain provisions for price escalation of the favored-nation type, which, by their terms, are to be activated by the purchase by El Paso of natural gas produced within certain geographical limits, and under conditions similar to those pertaining to the gas sold to El Paso by Respondents under the said rate schedules, at a price higher than is then being paid to Respondents under said rate schedules.

(4) These rate schedules provide that in determining whether a future purchase of natural gas by El Paso has activated the favored-nation escalation clause of said rate schedules, due consideration shall be given to all other pertinent factors.

(5) On or about December 26, 1958, the West Texas Gathering Company entered into sales of natural gas to El Paso Natural Gas Company at a base price of 18 cents per Mcf. The Respondents, as well as other natural gas companies, thereafter tendered for filing proposed increased rates and charges, in support of which they alleged that the foregoing sale had activated the favored-nation provisions in their contracts or had activated, directly or indirectly, escalation provisions of their contracts for the sale of gas subject to the jurisdiction of the Commission.

(6) Because of the large average volumes available for the wells contracted to and connected with West Texas' pipeline system and the high pressures at which gas is produced from the Emperor Field wells so connected in the Devonian, Fusselman and Ellenberger formations, these wells can be utilized, in periods of peak demand to meet heavy requirements upon the El Paso system in the same manner and with approximately the same effect as an equal volume of gas could be made available from a storage field located as conveniently to the same main line connection points with the said El Paso system.

(7) The availability and usefulness (in lieu of gas from storage) of the gas purchased by El Paso from West Texas under the contract constitutes a "pertinent factor" within the meaning of the terms as used in the contracts filed by the Respondents.

(8) The evidence of record conclusively establishes that the gas purchases by El Paso from the Respondents are of a different nature from the gas purchases from West Texas. The differences are of sufficient magnitude to preclude the activation of the favored-nation clauses.

(9) Respondents' applications for rate increases, specified in the Appendix, are not justified and should be dismissed.

(10) Respondents should be required to refund to El Paso, with interest from date of payment, all sums collected under and by reason of the undertakings filed with the Commission and specified in detail in the Appendix hereto.

(11) The Respondents should be required to bear all cost incidental to the making of the refunds hereinafter ordered.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission, that:

(A) The applications for proposed increased rates and charges named and specified in the Appendix hereto are hereby dismissed for lack of justification.

(B) The increased rates and charges contained in said applicable FPC Gas Rate Schedules are hereby cancelled.

(C) The rates and charges for the sale of natural gas by Respondents to El Paso Natural Gas Company under Respondents' FPC Gas Rate Schedules which were filed and made effective subsequent to the effective dates of the favored-nation rates in issue herein shall remain in force until further action by the Commission.

(D) Within 45 days from the date on which this order shall become effective, Respondents shall refund to El Paso the difference between the amounts collected from El Paso under the supplemental filings and gas rate schedules described in the Appendix hereto, and the rates and charges due and payable by El Paso to Respondents and the said rate schedules of Respondents prior to the filing and suspension of said supplements; together with simple interest at the rate of six percent per annum for the rate schedules suspended before March 1, 1960,

and seven percent for the schedules suspended thereafter (*cf.* Order No. 215A, 23 FPC 474), from the respective dates of the receipt of said excess amounts by Respondents to the date of refund. Respondents shall bear all costs incidental to the making of such refunds.

(E) Within 60 days from the date when this Order shall become effective, Respondents shall report to the Commission in writing and under oath the details of their calculations resulting in refunds ordered pursuant to Paragraph (D) above, together with copies of releases from El Paso with respect to such refunds.

(F) Motions made by various parties during the hearing but thus far not specifically granted are hereby denied.

ALLEN C. LANDE,
Presiding Examiner.

APPENDIX

FAVORED NATION RATE INCREASES IN THE PERMIAN BASIN AREA BASED UPON THE SALE OF WEST TEXAS GATHERING COMPANY TO EL PASO NATURAL GAS COMPANY IN WINKLER COUNTY, TEXAS [1]

Producer	Rate schedule No.	Previous rate ¢/Mcf	Favored nation rate ¢/Mcf	Docket No.	Effective date	Renegotiated rate ¢/Mcf	Docket No.	Effective date
Sun Oil Company	30	14.12	16.0	G-18184	9- 9-59	15.71	RI62-382	4- 9-62
Do	58	12.56	15.54	G-18184	9- 9-59	15.04	RI62-382	4- 9-62
		13.02	16.0			15.50		
Do	61	13.14	16.0	G-18184	9- 9-59	15.50	RI62-382	4- 9-62
Do	65	12.08	16.0	G-18184	9- 9-59	14.70	RI62-382	4- 9-62
Shell Oil Company	16	11.03	16.1536	G-18185	9-13-59	15.65	RI61-475	5- 2-61
Do	17	10.95	16.216	G-18266	9-23-59	14.19	RI61-475	5- 2-61
Do	18	10.95	16.216	G-18267	9-23-59	14.19	RI61-475	5- 2-61
Do	20	10.88	16.108	G-18267	9-23-59	14.11	RI61-477	5- 2-61
Do	33	10.93	16.0018	G-18185	9-13-59	15.50	RI61-475	5- 2-61
Do	40	10.93	16.0018	G-18185	9-13-59	15.50	RI61-475	5- 2-61
Do	41	10.93	16.0018	G-18185	9-13-59	15.50	RI61-476	5- 2-61
Do	95	10.93	16.0018	G-18185	9-13-59	15.50	RI61-475	5- 2-61
Do	34	10.93	16.0018	G-18186	9-13-59	15.50	RI61-477	5- 2-61
Do	108	14.02	18.0452	G-18266	9-23-59	17.04	RI61-475	5- 2-61
Hunt Oil Company	31	14.17	18.0	G-18464	10-14-59	17.23	G-18464	3-18-60
Do	33	13.53	16.0	G-18555	10-30-59	15.71	G-18555	3-17-60
Do	36	13.53	[2] 16.0	G-18555	10-30-59	[2] 15.71	G-18555	7-21-60
N. B. Hunt	1	13.35	16.0	G-18557	10-30-59	15.50	G-18557	3-17-60
Lamar Hunt	1	13.35	16.0	G-18847	12- 6-59	15.50	G-18847	3-18-60
W. H. Hunt	1	13.35	16.0	G-18848	12- 6-59	15.50	G-18848	3-18-60
H. L. Hunt	6	13.53	16.0	G-18554	10-30-59	15.71	G-18554	3-17-60
Do	15	13.53	16.0	G-18554	10-30-59	15.71	G-18554	3-17-60
Lyda Hunt-Margaret Trusts	4	13.53	16.0	G-18556	10-30-59	15.71	G-18556	3-17-60
Lyda Hunt-Caroline Trusts	4	13.53	16.0	G-18556	10-30-59	15.71	G-18556	3-17-60
Lyda Hunt-Herbert Trusts	4	13.53	16.0	G-18556	10-30-59	15.71	G-18556	3-17-60
Lyda Hunt-Bunker Trusts	4	13.53	16.0	G-18556	10-30-59	15.71	G-18556	3-17-60
Lyda Hunt-Lamar Trusts	4	13.53	16.0	G-18556	10-30-59	15.71	G-18556	3-17-60
Secure Trusts	3	13.53	16.0	G-18558	10-30-59	15.71	G-18558	3-17-60
Claude E. Aikman	1	9.5	16.0	G-18466	10-15-59	14.70	R160-73	7- 6-60
The Superior Oil Company	44	10.5	15.2	G-18771	11-27-59			
Do	8	12.78	[3] 18.107	G-20075	4-12-60			
Do	9	12.78	[3] 16.0905	G-20075	4-12-60			
Do	10	10.88	[3] 16.137	G-20075	4-12-60			
Do	30	12.83	[3] 16.154	G-20075	4-12-60			
Sun Oil Company	1	14.06	[4] 18.0452	RI60-123	7-11-60	17.10	RI62-382	4- 9-62
Do	80	14.07	[4] 18.0452	RI60-124	7-11-60	17.10	RI62-383	4- 9-62
Shell Oil Company	19	10.88	[4] 16.1377	RI60-235	9- 9-60	14.12	RI61-476	5- 2-61
Do	134	10.31	[4] 15.7093	RI60-236	9- 9-60	13.68	RI61-475	5- 2-61
Do	142	14.17	[4] 18.243	RI60-236	9- 9-60	17.23	RI61-475	5- 2-61

[1] All rates shown are at 14.65 psia and include tax reimbursement when applicable.
[2] High pressure gas only.
[3] Based upon increased rates of Shell Oil Company and Hunt Oil Company which were in turn based upon the West Texas Gathering Co. sale.
[4] Based upon increased rates of Shell Oil Company which were in turn based upon the West Texas Gathering Co. sale.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, and L. J. O'Connor, Jr.

CITIES SERVICE COMPANY, DOCKET NO. G-16563, ET AL.

ORDER SEVERING APPLICATION AND GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 18, 1963)

On January 31, 1963, Cities Service Company (Cities), one of the six applicants in the above-consolidated Section 7(c) certificate proceedings, filed a motion for severance and disposition of its certificate applications under the abridged procedure provided in Section 1.12 and Section 1.32 of the Commission's Rules of Practice and Procedure.

Notice of the filing of Cities' application for a certificate and an order providing for hearings upon the application was issued on March 2, 1961. Subsequently hearings were held and concluded. On October 15, 1962 the presiding examiner filed his recommended initial decision. Meanwhile, on October 12, 1962, Cities submitted a Settlement Proposal with respect to the rate issues in a number of its proceedings then pending before the Commission, including its application in Docket No. G-16563.

The sole issue in the proceedings on the instant application of Cities is centered upon the level of the initial price provided for in the gas purchase contract with United Gas Pipe Line Company. However, as Cities has indicated in its Proposal, it is now willing to reduce the initial price from 18.2304¢ to 15.0¢ per Mcf, and accept a certificate on that basis. None of the parties to the settlement proceedings opposed the Proposal and on December 26, 1962, an order issued conditionally approving it.[1] Likewise, none of the parties to the instant consolidated proceeding opposes Cities' motion here. Answers to the motion were due for filing on February 10, 1963, and none were received.

Accordingly, we shall sever Cities' application from the above-captioned proceeding and since all hearings have been completed we shall issue a certificate of public convenience and necessity as hereinafter provided.

The Commission finds:

(1) Good cause exists for the severance of the certificate application in Docket No. G-16563 from the other applications in the above-captioned consolidated proceedings.

(2) Cities Service Company, having already commenced sales to United Gas Pipe Line Company, is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(3) The sales of natural gas hereinbefore described, as more fully described in Cities' application, will be in interstate commerce, subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The sales of natural gas by Cities, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered.

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[1] See "Order Conditionally Approving Rate Settlement Proposal, etc.," issued in *Cities Service Company, et al.*, Docket No. G-8921, *et al.*, on December 26, 1962, 28 FPC 1108.

(5) Cities is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

The Commission orders:

(A) The application for a certificate of public convenience and necessity filed by Cities Service Company in Docket No. G–16563 is hereby severed from the above-captioned consolidated proceedings.

(B) The certificate of public convenience and necessity be and the same is hereby issued upon the terms and conditions of this order authorizing the sale by the applicant herein of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission used for the sale of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application, amendments and exhibits in this proceeding.

(C) In accordance with the Settlement Proposal, conditionally approved by order of the Commission on December 26, 1962, the initial rate chargeable after that date by Cities Service Company to United Gas Pipe Line Company for the sale of gas certificated herein shall be 15.0¢ per Mcf at 14.65 psia including tax reimbursement; and further, the other provisions of the accepted Settlement Proposal relating to the instant sale are incorporated herein and made a part of this order, including Cities' waiver of its right to file for contractually authorized increased rates until April 1, 1965.

(D) The grant of certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Section 154 of the Commission's Rules and Regulations thereunder, requiring the filing of rate schedules for the services herein authorized, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Cities Service Company. Further, our action in this proceeding shall not foreclose or prejudice any future proceedings or objection relating to the operation of any price or related provisions of the gas purchase contract herein.

(E) The certificate issued herein is not transferable and shall be effective only so long as the applicant continues the acts and operations herein authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, and L. J. O'Connor, Jr.

CONTINENTAL OIL COMPANY (OPERATOR), ET AL., FPC GAS RATE SCHEDULE NO. 115

ORDER DENYING APPLICATION FOR REHEARING

(Issued March 18, 1963)

On February 21, 1963, United Gas Pipe Line Company (United) filed an Application for Rehearing of the Commission's acceptance of a unilateral rate increase filing by Continental Oil Company (Operator), *et al.*, (Continental) under its FPC Gas Rate Schedule No. 115. Continental makes jurisdictional

sales of natural gas to United under its FPC Gas Rate Schedule No. 115, from the Johnson Bayou Field, Cameron Parish, Louisiana (South Louisiana). Although the gas purchase contract between Continental and United expired on January 31, 1963, pursuant to notice by Continental to United, authorization to abandon the sale under 7(b) of the Act has not been sought by Continental.

On December 28, 1962, Continental tendered a unilateral proposed rate increase providing for a rate of 15.75¢ per Mcf, including tax reimbursement, at 15.025 psia which is the ceiling rate for increased rate filings in South Louisiana. United protested the proposed increase in January 18, 1963. The proposed increased rate, designated as Supplement No. 7 to Continental's FPC Gas Rate Schedule No. 115, was accepted for filing on January 25, 1963, to be effective as of January 31, 1963.

United contends that Continental has no right to make a unilateral filing. However, in *Sunray Mid-Continent Oil Co.* v. *F.P.C.*,[1] the Supreme Court, distinguishing a producer's (obligations under the Act and under) its contract with the purchaser, stated that:

> The obligation that petitioner will be under after the contract term will not be one imposed by contract but by the Act. It will be free then, as it was not free during the contract term under the contract here in question, to make rate changes under § 4 without United's consent. [364 U.S. 137, at page 155].

While it can be argued that this language in the *Sunray* case is dictum, we think it properly states the law.[2] Since the contract has expired, Continental is not barred from filing a unilateral increase.

United further contends that the Commission was required to institute a formal hearing on United's protest to Continental's rate filing. United's argument is a legal one, presenting no factual issues for determination. Under these circumstances, we were not required to hold a hearing. See *Mississippi River Fuel Corp.* v. *F.P.C.*, 281 F. 2d 919, at 927.

United's other arguments are related to Continental's petition for an order to show cause, filed on February 1, 1963 in Docket No. CI63-979. Accordingly, these arguments will be considered in connection with that matter.

The Commission finds:

The assignments of error and grounds for rehearing set forth in the application for rehearing present no new facts or principles of law which were not considered by the Commission in accepting Continental's increased rate filing, or which having now been considered warrant any change or modification of the Commission's action.

The Commission orders:

The application for rehearing filed by United Gas Pipe Line Company on February 21, 1963, is hereby denied.

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[1] *Sunray Mid-Continent Oil Company* v. *F.P.C.*, 364 U.S. 137.

[2] Our position here is also consistent with the action taken by us in a number of previous cases. See *Phillips Petroleum Company*, Docket No. G-20352, order issued December 16, 1959; *Continental Oil Company*, Docket No. RI60-165, and *Wrightsman Oil Company*, Docket No. RI60-163, order issued February 24, 1960; *Phillips Petroleum Company*, Docket No. RI60-336, order issued May 11, 1960.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, and L. J. O'Connor, Jr.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP60-58

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 18, 1963)

On August 27, 1962 as supplemented on September 11, 1962, El Paso Natural Gas Company (El Paso) filed in Docket No. CP60-58 an application to amend the Commission's order issued September 2, 1960, 24 FPC 394, as amended, in said docket to delete therefrom authorization to construct and operate facilities necessary to provide an additional 4800 compressor horsepower and additional purification and dehydration capacity at El Paso's Goldsmith Compressor Station in Ector County, Texas, all as more fully set forth in the application to amend.

The order of September 2, 1960, issued El Paso a certificate of public convenience and necessity authorizing the construction and operation of certain facilities to provide an additional 6,800 compressor horsepower and additional purification and dehydration capacity at the Goldsmith Compressor Station. El Paso states herein that it has installed only 2000 of the authorized horsepower and that the remaining authorized 4800 horsepower and the purification and dehydration facilities were not constructed and are not needed. El Paso states further that 4800 of the authorized horsepower facilities and the purification and dehydration facilities are not required because of the extension of the term of an industrial sales contract, thus eliminating the need for processing and compressing this gas in the immediate future. Further, El Paso indicates that the deliverability estimates for the field supplying gas to the Goldsmith Station, relied upon in the original application herein, were based upon a monthly average of 11 producing days, whereas the allowable producing days for these fields have averaged less than 9 days per month since filing of the application. Hence, the total additional quantities of natural gas originally contemplated to be available at the Goldsmith location have never been realized. El Paso states that further incremental horsepower additions and additional dehydration and purification capacity will be required only upon significant upward variation in the present level of producing days established by the Texas Railroad Commission and termination of the industrial sale.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on February 12, 1963 (28 F.R. 1358). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued September 2, 1960, in Docket No. CP60-58 be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued September 2, 1960, in Docket No. CP60-58 be and the same is hereby further amended to delete therefrom authorization for the construction and operation of 4800 compressor horsepower and the purification and dehydration facilities therein authorized, all is hereinbefore described and as set forth in the subject application, as supplemented.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, and L. J. O'Connor, Jr.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP63-196

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 18, 1963)

On January 7, 1963, Florida Gas Transmission Company (Applicant), filed in Docket No. CP63-196 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities for the purpose of making sales of natural gas to the Town of Altha, Calhoun County, Florida, for resale to consumers in the municipality and surrounding area. The facilities proposed consist of a metering and regulating equipment at a point on Applicant's 24-inch main transmission pipeline, all as more fully described in the application.

The estimated gas requirements for the area to be served through these facilities are as follows:

	First year	Second year	Third year
	Mcf	*Mcf*	*Mcf*
Peak day	95	95	95
Annual	8,400	8,520	8,640

The proposed sale is to be made under Rate Schedule G of Applicant's FPC Gas Tariff, Original Volume No. 1. The total estimated cost of the facilities is $10,640 which will be financed from funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 7, 1963, respecting the matters involved in and the issues presented by the application, as supplemented, herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Florida Gas Transmission Company, a Delaware corporation having its principal place of business in Winter Park, Florida, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1956, in Docket Nos. G-9262 and G-9960 (16 FPC 118).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Florida Gas Transmission Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application, as supplemented, herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sales of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, and L. J. O'Connor, Jr.

LONE STAR GAS COMPANY, DOCKET NO. CP63-152

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued March 18, 1963)

On November 30, 1962, Lone Star Gas Company (Applicant) filed in Docket No. CP63-152 an application pursuant to Section 7(b) of the Natural Gas Act, for authority to abandon 5,615 feet of 4-inch Line TE-A, extending from the tap for Line FX-398-T to Station 1 plus 23 in a southwesterly direction to the connection of the Ambassador Oil Corporation, *et al.* Virgil McPhail No. 1 Well, in Loco District, Stephens County, Oklahoma, as more fully described in the application.

Applicant states that the said facilities are connected with the well which can no longer produce gas against the working pressures normally maintained in its pipeline system so that no service is being rendered by such facilities.

The total estimated cost of removal of the facilities above described is $2,026, and the salvage value is $1,830.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 4, 1963 respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff Counsel moved orally at the hearing that the intermediate decision procedure be omitted and the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a natural gas company within the meaning of the Natural Gas Act and the facilities described herein above were authorized by the Commission in Docket No. G–14136 by order issued on May 12, 1958, and are subject to the jurisdiction of the Commission, 19 FPC 670.

(2) The available supply of natural gas from the well to which the facilities are attached has become so depleted as to render further service therefrom unwarranted so that the present and future public convenience and necessity permits abandonment thereof.

(3) A request made during the public hearing by Staff Counsel for the omission of the intermediate decision procedure under Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure was unopposed by any party of record, and not having been denied by the Commission is granted pursuant to Section 1.30(c)(1) of the rules.

The Commission orders:

(A) Applicant be and is hereby permitted to abandon and remove the facilities heretofore described, as more fully described in the application.

(B) Applicant shall within ten days after removal of the said facilities from their emplacement advise the Commission thereof.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, and L. J. O'Connor, Jr.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP62–307

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 18, 1963)

On June 29, 1962, as supplemented on August 20, 1962, Northern Natural Gas Company (Applicant) filed in Docket No. CP62–307 an application pursuant to Section 7(c) of the Natural Gas Act for certificate of public convenience and necessity authorizing the construction and operation of facilities for the testing and development of the Vincent underground natural gas storage field in Humboldt, Webster, and Wright Counties, Iowa, all as more fully set forth in the application as supplemented.

Information made available to Applicant by the Iowa Geological Survey indicates the possible existence of a suitable underground structure, and Applicant desires to initiate a program of shallow well drilling to test the structure. The Iowa State Commerce Commission has issued a permit to Applicant authorizing the storage of natural gas in the proposed Vincent Storage Field. Before engaging in full scale operation of any proven reservoirs, Applicant will make the necessary certificate application to the Commission.

The total estimated cost of the necessary facilities is $209,600 of which $90,000 reflect cost of material which can be transferred from the Redfield Storage Field and thus will not involve any additional cash outlay. The project will be financed from funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 7, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or notice of intervention has been received. A petition to intervene was filed on September 4, 1962, by Northwestern Public Service Company and was withdrawn on January

14, 1963. No other petitions to intervene have been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceedings, will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) Public convenience and necessity require that the maximum inventory of gas stored in the Vincent Storage Field should be limited to 5,000,000 Mcf and that this order should not be construed as authorizing accounting provisions for estimated ultimate losses (or depreciation) of stored gas, other than may be authorized in accordance with the provisions of the Commission's Uniform System of Accounts.

(7) Public convenience and necessity require that Applicant should submit monthly reports on the testing operations containing such information as hereinafter ordered.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities as hereinbefore described, and as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's

Regulations under the Natural Gas Act, within one year from the date on which this order issues.

(D) The maximum inventory of gas stored in the Vincent Storage Field shall be limited to 5,000,000 Mcf, and this order shall not be construed as authorizing accounting provisions for estimated ultimate losses (or depreciation) of stored gas, other than may be authorized in accordance with the provisions of the Commission's Uniform System of Accounts.

(E) Applicant shall submit monthly reports containing the following information on the proposed testing operations:

(a) The volumes of natural gas injected or withdrawn together with the corresponding total volumes in the reservoir;

(b) The maximum daily injection or withdrawal rate experienced during the month;

(c) The average working pressure on such maximum days taken at a central measuring point where the total volume injected or withdrawn is measured;

(d) The water level in each observation well;

(e) The stabilized shut-in wellhead pressure of each observation and active well when pressure stabilization exists; and a graph shall accompany the report showing the injection and withdrawal rates by days, the water levels, and the stabilized shut-in wellhead pressures for each observation well by days;

(f) All gamma ray, neutron, or other electric log surveys;

(g) All core analyses;

(h) For each well, the date on which gas was first noted during injection and the date on which water seriously encroached during withdrawal;

(i) A map showing the latest concept of structure based on development and the pressures requested in (e) above shall be shown when taken together with the area occupied by the gas bubble, as indicated by the information requested in (b) above;

(j) Status of acreage control for storage purposes;

(k) Status of permits required by State agencies having jurisdiction;

(l) Back pressure data and curves;

(m) Discussion of current operations and conclusions with respect to input capacity at various inventories, input pressure at wells, and the ability of the storage reservoir to retain gas; and

(n) any other data which may aid the Commission in the evaluation of the Vincent gas storage project.

Before Commissioners: Joseph C. Swidler, Chairman: Howard Morgan, and L. J. O'Connor, Jr.

THE OHIO FUEL GAS COMPANY, DOCKET NO. CP63–160

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 18, 1963)

On December 7, 1962 (supplemented on January 18, 1963), The Ohio Fuel Gas Company (Applicant) filed in Docket No. CP63–160 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 0.6 mile of 20-inch O.D. and 10.2 miles of 16-inch O.D. natural gas transmission pipeline in Montgomery and Miami Counties, Ohio, looping part of its existing facilities serving the Troy-Sidney market area, together with valves, fittings and other incidental facilities necessary for practical operation, all as more particularly described in the application.

Applicant shows that the proposed facilities are necessary to maintain adequate service to its existing market areas north of Dayton, Ohio. Service will be rendered under filed rates.

The estimated cost of construction of the proposed facilities is $580,000 which will be financed through The Columbia Gas System, Inc., the parent company of Applicant.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 7, 1963, respecting the matters involved in and the issues presented by the application, as supplemented. No protest to the granting of the application and no petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) The Ohio Fuel Gas Company is a "natural-gas company" within the meaning of the Natural Gas Act and the facilities proposed to be constructed and operated will become integral parts of the Applicant's existing transportation system.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing The Ohio Fuel Gas Company, to construct and operate the facilities described all as more fully described in the application, upon the terms and conditions of this order.

(B) The certificate issued and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable rules and regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

(C) The construction of the facilities authorized by this certificate shall be completed and the facilities be placed in operation within eight months from the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Charles R. Ross.

PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY, WASHINGTON, PROJECT NO. 2042

ORDER APPROVING REVISED PROJECT EXHIBITS AND ADJUSTING ANNUAL CHARGES

(Issued March 18, 1963)

On June 12, 1961, Public Utility District No. 1 of Pend Oreille County, Washington, licensee for major Project No. 2042 [issued, 11 FPC 786 (1952)], filed for Commission approval revised Exhibits K and L. The project, known as the Box Canyon Project, is situated on the Pend Oreille River in the State of Washington, and affects lands of the United States within the Kaniksu and Coleville National Forests.

Commission approval of revised Exhibit L would allow the project to be so operated that the backwater on the Albeni Falls project of the Corps of Engineers, Department of the Army, would be two feet instead of one foot. Commission approval of revised Exhibit K would reflect minor changes in the project boundary to include therein 0.29 acre of lands of the United States affected by the increase in backwater effect in the lower end of the project reservoir, with a resultant increase in the annual charges for the use of such lands.

The licensee states that the proposed changes are necessary and desirable because experience has shown that the original backwater curves do not provide for sufficient head loss through the canyon immediately upstream from the Box Canyon dam, thus reducing the available head at Box Canyon when maintaining one foot of backwater at Albeni Falls. The licensee stated also that the proposed two feet of backwater at Albeni Falls will provide some additional head over that originally contemplated at Box Canyon dam.

The Secretary of the Army and the Chief of Engineers, have reported that the proposed increase in backwater will have no adverse effect on navigation interest; that additional license terms or conditions in the interest of navigation are not considered necessary; and that the existing agreement between the licensee and the Corps, required by Article 29 of the license, provides for repayment of power loss at Albeni Falls based on the actual backwater experienced during operation, and, therefore, the agreement will not require change because of the proposed increase in backwater.

The Department of Agriculture has advised that the affected Exhibit K, sheet 1 (FPC No. 2042–12), as revised to show the additional lands of the United States to be occupied by the project, is adequate for the protection and utilization of the Coleville National Forest, and there is no objection to Commission approval of the revised exhibit.

The staff has made the changes in the affected Exhibit K and L tracings pursuant to the licensee's authorization in letter dated October 11, 1961.

The Commission finds:

(1) Exhibit K–1 through –5 (FPC No. 2042–12 through –16), as revised, and Exhibit L–5 and –6 (FPC No. 2042–23 and –24), as revised, conform to the Commission's rules and regulations and should be approved as part of the license for the project, and Exhibit K–1 through –5 (FPC No. 2042–12 through –16) and Exhibit L–5 and –6 (FPC No. 2042–23 and –24) now parts of the license and which have been superseded should be eliminated from the license.

(2) The increased annual charges for recompensing the United States for the use of additional lands of the United States by the project is reasonable as hereinafter fixed and specified.

The Commission orders:

(A) The revised exhibits described in finding (1) above are hereby approved as part of the license for Project No. 2042, and the exhibits described in the same finding as being superseded are hereby eliminated from the license.

(B) Subparagraph (ii) of the Article 36 of the license, as revised, is further revised to read as follows:

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, $338.26.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, and L. J. O'Connor, Jr.

TENNESSEE GAS TRANSMISSION COMPANY AND TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP63-177

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 18, 1963)

On December 21, 1962, Tennessee Gas Transmission Company (Tennessee) and Texas Eastern Transmission Corporation (Texas Eastern), filed in Docket No. CP63-177 their joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to construct and operate four interconnections between their pipeline systems at points located in Jackson County, Texas, Allen Parish, Louisiana, Scioto County, Ohio and at river crossings in Issaquena County, Mississippi, all as more fully set forth in the application.

The Applicants state that the purpose of the facilities proposed is to enable them to render emergency gas service to each other when required. All emergency deliveries will be returned in kind.

The estimated total cost of the interconnections is $404,380. $243,640 of this amount will be shared equally and the difference will be paid by each Applicant for separate taps and side valves on its own facilities. All costs will be financed from company cash on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 6, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff Counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Tennessee Gas Transmission Company and Texas Eastern Transmission Corporation are natural gas companies within the meaning of the Natural Gas Act.

(2) The facilities hereinbefore described are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the

Commission, and the construction and operation thereof as integral parts of these Applicants' pipeline systems are subject to the requirements of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations thereunder.

(4) The construction and operation of the proposed interconnection facilities for the purposes stated in the application are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by Staff Counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicants, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, and L. J. O'Connor, Jr.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP63-96; ALGONQUIN GAS TRANSMISSION COMPANY, DOCKET NO. CP63-97

FINDINGS AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 18, 1963)

On October 16, 1962, as supplemented on November 6, 1962, Texas Eastern Transmission Corporation (Texas Eastern) filed in Docket No. CP63-96 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities to provide approximately 40,800 Mcf (14.73 psia) of additional natural gas capacity per day on its pipeline system and the sale and delivery of an additional 39,384 Mcf of natural gas per day to certain customers, all as more fully set forth in the application, as supplemented.

Specifically, Texas Eastern proposes to construct and operate the following facilities, together with necessary appurtenances:

(1) A compressor station near Yazoo, Mississippi, of approximately 8,000 horsepower;

(2) Approximately 57 miles of 30-inch pipeline loops on its transmission system at various locations and in varying amounts between Kosciusko, Mississippi, and Station 21-A in Lafayette County, Pennsylvania;

(3) Approximately 5.75 miles of 30-inch pipeline loops on its transmission system at various locations and in varying amounts between Delmont Station in Westmoreland County, Pennsylvania, and Station No. 26 in Hunterdon County, Pennsylvania;

(4) Changeout impellers in existing compressors at various compressor stations, including compressor stations near Egypt, Mississippi; Barton, Alabama; Mt. Pleasant, Tennessee; Gladeville, Tennessee; Tompkinsville, Kentucky; Owensville, Kentucky; Wheelersburg, Ohio; Athens, Ohio, and Berne, Ohio;

(5) Changeout guide vanes in existing compressors at Armagh and Entriken, Pennsylvania, Compressor Stations;

(6) A meter and regulating station located on the Public Service lateral near Hanover, New Jersey, for deliveries to New Jersey Natural Gas Company;

(7) A meter and regulating station located on the Public Service lateral near Hanover, New Jersey, for deliveries to Algonquin Gas Transmission Company, and,

(8) A meter and regulating station located on the Perth Amboy lateral for deliveries to Elizabethtown Consolidated Gas Company

Texas Eastern proposes to sell and deliver, under long term service agreements and its Annual Firm FPC Gas Rate Schedules, the following daily quantities of natural gas, in addition to the volumes previously authorized, to the following customers:

Customers	*Mcf at 14.73 psia*
Algonquin Gas Transmission Company	22,333
City of Batesville, Indiana	221
Elizabethtown Consolidated Gas Company	1,530
Town of Franklin, Tennessee	204
Illinois Electric and Gas Company	1,020
Missouri Utilities Company	2,550
National Gas and Oil Company	1,020
New Jersey Natural Gas Company	5,100
Public Service Electric and Gas Company	5,100
United Cities Gas Company, Illinois Division	204
United Cities Gas Company, Tennessee Division	102

The application shows the estimated cost of the proposed facilities to be $14,839,000, which cost will be financed by the issuance of 4½% revolving credit notes.

On October 16, 1962, Algonquin Gas Transmission Company (Algonquin) filed in Docket No. CP63-97 an application pursuant to Section 7(c) of the Natural Gas Act authorizing the construction and operation of certain facilities necessary to provide additional daily design capacity on its pipeline system and the sale and delivery of an additional 22.115 Mcf (14.73 psia) of natural gas per day to certain customers, all as more fully set forth in the application.

Specifically, Algonquin proposes to construct and operate the following facilities, together with necessary appurtenances:

(1) Approximately 18.2 miles of 30-inch pipeline loop in New Jersey and New York extending from Valve 11, Oakland, New Jersey, to the Stony Point Compressor Station;

(2) Approximately 3.1 miles of 30-inch pipeline loop in New York extending from Stony Point Compressor Station to Valve 14A at the Hudson River;

(3) Approximately 22.7 miles of 30-inch pipeline loop in New York and Connecticut extending from Valve 15, Yorktown, New York, to Valve 19 in Danbury, Connecticut, and,

(4) Approximately 11.4 miles of 30-inch pipeline loop in Connecticut and Rhode Island extending from Valve 35, Pomfret, Connecticut, to the Burrillville Compressor Station.

Algonquin proposes to sell and deliver, under long-term service agreements and its FPC Gas Rate Schedule F–1, the following daily quantities of natural gas, in addition to the volumes previously authorized, to the following customers:

Customer	*Mcf at 14.73 psia*
Boston Gas Company	8,500
Brockton Taunton Gas Company	2,602
Buzzards Bay Gas Company	800
The Connecticut Gas Company	2,700
Fall River Gas Company	1,500
The Hartford Gas Company	1,400
New Haven Gas Company	2,000
North Attleboro Gas Company	50
Norwood Gas Company	263
Providence Gas Company	1,500
Worcester Gas Light Company	800

The application shows the estimated cost of the proposed facilities to be $12,116,300, which cost will be financed by retained earnings and short-term bank loans.

Algonquin states that it will purchase from its sole supplier, Texas Eastern, the additional volumes of natural gas necessary to make the proposed sales.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 5, 1963, respecting the matters involved in and the issues presented by the applications in this consolidated proceeding. A number of petitions to intervene have been filed in the subject dockets by various interested companies. In all cases, the burden of such filings has been that the petitioners did not request formal hearing herein and did not object to the hearing and disposition of the subject applications under the shortened procedure provided for by the Commission's Rules, but that each petitioner desired to preserve its rights to appear and participate fully in the event that these matters should be set for formal hearing. Inasmuch as the abridged hearing procedure is being used herein, no further action on the various intervention petitions appears necessary.

No protests to the granting of the applications having been received and no other appearances having been entered at the hearing, staff counsel moved orally that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 10, 1947, in Docket No. G–880 (6 FPC 148).

(2) Applicant, Algonquin Gas Transmission Company, a Delaware corporation having its principal place of business in Boston, Massachusetts, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of February 26, 1951, in Docket No. G–1319 (10 FPC 35).

(3) The facilities hereinbefore described, as more fully described in the applications in Docket Nos. CP63–96 and CP63–97, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation

and sales of natural gas by Texas Eastern and Algonquin are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Texas Eastern and Algonquin are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities and the proposed sales of natural gas by Texas Eastern and Algonquin are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulation.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued authorizing Applicant, Texas Eastern Transmission Corporation, and Applicant, Algonquin Gas Transmission Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application, as supplemented, in Docket No. CP63–96, and the application in Docket No. CP63–97, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized in Docket Nos. CP63–96 and CP63–97 shall be constructed and placed in actual operation and the sales of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, and L. J. O'Connor, Jr.

TWIN GAS COMPANY,[1] DOCKET NO. CP63–144

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued March 18, 1963)

On November 23, 1962, as supplemented on December 31, 1962, and February 20, 1963, Twin Gas Company (Applicant) filed in Docket No. CP63–144 an application

[1] The subject application was originally filed as and noticed as John H. Ware, III, C. E. Martin and Ralph N. Evans, Original Incorporators of Twin Gas Company. The second supplement, filed on February 20, 1963, indicates that by order of February 18, 1963, the Pennsylvania Public Utility Commission approved the incorporation, organization and creation of Twin Gas Company.

pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Texas Eastern Transmission Corporation (Texas Eastern) to establish physical connection of its transmission facilities near the Borough of Bedford, Pennsylvania, with the proposed facilities of Applicant, and to sell natural gas to Applicant for resale and distribution in Bedford, and environs, all as more fully set forth in the application, as supplemented.

Applicant proposes to construct and operate a distribution system in Bedford as well as 8 miles of 4-inch pipeline from Texas Eastern's transmission line to Bedford and to a proposed plant of Standard Register Company (Standard) which plant Applicant proposes to serve.

The cost of the proposed facilities is estimated to total $194,400, which cost will be financed by funds provided by Penn Fuel Gas, Inc., the parent of Applicant. Standard will also provide $12,000 as an advance in aid of construction.

The application shows the estimated third year peak day and annual natural gas requirements of Applicant to be 488 Mcf and 72,550 Mcf, respectively.

The application indicates that Applicant has received appropriate authorization from the Pennsylvania Public Utility Commission and from the Borough of Bedford.

On December 12, 1962, Texas Eastern filed its answer to the subject application, stating that it would abide by the Commission's order issued herein.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on February 2, 1963 (28 FR 1087). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 10, 1947, in Docket No. G-880 (6 FPC 148).

(2) Applicant, Twin Gas Company, is a public utility duly organized and existing under the laws of the Commonwealth of Pennsylvania and authorized to engage in the business of distributing and selling natural gas within said Commonwealth.

(3) It is necessary and desirable in the public interest that Texas Eastern be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 488 Mcf of natural gas per day to Applicant, as set forth in the application, as supplemented, and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Texas Eastern within one year from the date of issuance of this order.

(5) The requirement that Texas Eastern serve Applicant, as proposed, will not place any undue burden upon Texas Eastern nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Texas Eastern Transmission Corporation be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 488 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully set forth in the application, as supplemented.

(B) Applicant shall be prepared to receive natural gas from Texas Eastern within one year from the date of issuance of this order.

(C) Texas Eastern shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, and L. J. O'Connor, Jr.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP63-108

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 18, 1963)

On October 29, 1962, as supplemented on December 19, 1962, United Gas Pipe Line Company (Applicant) filed in Docket No. CP63-108 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the sale and delivery of natural gas to the Village of Tangipahoa, Tangipahoa Parish, Louisiana (Village), for resale and distribution in said Village, all as more fully set forth in the application, as supplemented.

Applicant proposes to construct and operate approximately .01 mile of 2-inch pipeline, a sales meter station and appurtenant facilities on its 30-inch pipeline in Tangipahoa Parish, Louisiana. The estimated cost of the proposed facilities is $6,137, which cost will be financed by Applicant out of current working funds.

The application indicates that the Village will purchase the existing distribution facilities within the corporate limits of said Village from the present owner and distributor, the Town of Kentwood, Louisiana. Village will also construct and operate a pipeline from the distribution system to Applicant's proposed facilities. The approximate cost of construction of facilities and the purchase cost of distribution facilities is estimated to be $31,000. Village will finance these costs by the issuance of revenue bonds and by a proposed grant of $77,600 from the Federal Government under the Accelerated Public Works Program. $12,000 of the Federal grant would be applicable to the Village's natural gas project.

The third year estimated peak day and annual natural gas requirements for the Village are 88 Mcf and 6470 Mcf, respectively.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 7, 1963, respecting the matters involved in and the issues presented by the application, as supplemented, herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale of natural gas by Applicant are required by the public convenience and

necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) The certificate hereinafter issued to Applicant is conditioned upon the Village's obtaining a grant of $77,600 under the Accelerated Public Works Program, $12,000 of said grant being applicable to the Village's natural gas project.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, United Gas Pipe Line Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application, as supplemented, herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sales of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

(D) The certificate issued to Applicant in paragraph (A) above is hereby conditioned upon the Village's obtaining a grant of $77,600 under the Accelerated Public Works Program, $12,000 of said grant being applicable to the Village's natural gas project.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, and L. J. O'Connor, Jr.

CARNEGIE NATURAL GAS COMPANY, DOCKET NO. CP63-191

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES AND SERVICE AND ACCEPTING NOTICES OF CANCELLATION OF RATE SCHEDULE AND TERMINATION OF SERVICE AGREEMENT

(Issued March 19, 1963)

On December 26, 1962, Carnegie Natural Gas Company (Applicant) filed in Docket No. CP63-191 an application pursuant to Section 7(b) of the Natural Gas Act for permission to abandon certain facilities located in Lincoln District, Marion County, West Virginia and to abandon the sale of gas to Hope Natural Gas Co. from such facilities. The facilities consist of valves, gates, fittings and other appurtenances which were used and useful in making deliveries of natural gas to Hope Natural Gas Company from lands in Marion and Magnolia Counties, West Virginia until December 1961, at which time gas availability declined to a point where the sale and purchase of gas was no longer economical. No sale

of natural gas by Applicant to Hope Natural Gas Company has been made during the 12-month period preceding December 1962. Carnegie states that Hope has disconnected its metering facilities from Carnegie's facilities.

Applicant shows that the facilities above described are no longer of any use to it or to the public and the public convenience and necessity does not require them.

Concurrently with its abandonment application, Carnegie filed First Revised Sheet No. 7 to its FPC Gas Tariff, First Revised Volume No. 1 constituting a Notice of Cancellation of its Rate Schedule S–2 and a Notice of Termination of its service agreement with Hope, dated October 22, 1957, under which it sold gas to Hope from the subject facilities. Carnegie requested an effective date of January 28, 1963 for the rate filings.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 7, 1963 respecting the matters involved in and the issues presented by the application. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and the Commission render a decision herein pursuant to Section 1.40(c) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a natural gas company within the meaning of the Natural Gas Act and the facilities and sale hereinbefore described are subject to the jurisdiction of the Commission.

(2) The available supply of natural gas from the field served by the facilities has declined to the point that further operation thereof is unwarranted and abandonment thereof and sale of gas to Hope Natural Gas Co. therefrom should be permitted and approved.

(3) A request during the public hearing by Staff Counsel for omission of the intermediate decision procedure under Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c)(1) of the said rules.

The Commission orders:

(A) Applicant be and is hereby permitted to abandon the facilities and sale of gas as heretofore described, as more fully described in the application.

(B) Applicant shall advise the Commission as to the date of abandonment of the facilities within 10 days thereof.

(C) Applicant's request for an effective date of January 28, 1963, for its rate filings, described herein, is hereby denied. Such rate filings are hereby accepted to become effective on the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, and L. J. O'Connor, Jr.

CENTRAL WISCONSIN GAS COMPANY, DOCKET NO. G–9813

ORDER DISMISSING APPLICATION

(Issued March 19, 1963)

On December 23, 1955, Central Wisconsin Gas Company, (Central) filed an application pursuant to Section 7(a) of the Natural Gas Act for an order directing Midwestern Gas Transmission Company (Midwestern) to establish physical

connection of its proposed transportation facilities with the facilities of Central and to sell and deliver to Central its natural-gas requirements for the cities of Waupaca, Sparta, and Tomah, Wisconsin. Central's application was dependent upon Midwestern's receipt of a certificate of public convenience and necessity authorizing the construction of the pipeline system which Midwestern proposed to construct and operate in its application filed in Docket No. G–9451. The order accompanying Opinion No. 316 issued October 31, 1958, in *American Louisiana Pipe Line Company, et al.*, Docket No. G–2306, *et al.*, 20 FPC 575, denied Midwestern's application filed in Docket No. G–9451. Thereafter Michigan Wisconsin Pipe Line Company was authorized to sell gas to Central for initiating natural-gas service in Waupaca by the order accompanying Opinion No. 331 issued October 31, 1959, in *Midwestern Gas Transmission Company, et al.*, Docket No. G–18313, *et al.*, 22 FPC 775.

On November 20, 1961, Central filed a notice of withdrawal of its application in Docket No. G–18227 wherein Central sought, *inter alia*, to have Northern Natural Gas Company (Northern) ordered to supply Central with natural gas for distribution in Sparta and Tomah, Wisconsin. Central's notice stated that Milwaukee Gas Light Company (Milwaukee Gas) had acquired all the assets of Central and that Central no longer operated as a gas public utility in the State of Wisconsin. This notice of withdrawal also indicated that on September 28, 1961, Northern had filed an application in Docket No. CP62–85 in which Northern is proposing to sell and deliver natural gas to Milwaukee Gas for distribution by the latter in Sparta and Tomah, Wisconsin.

The Commission finds:

The denial of Midwestern's application in Docket No. G–9451, the acquisition by Milwaukee Gas of Centrals' assets, and the actual extension of natural-gas service, or present proposal to extend such service, to all the communities for which Central sought to obtain natural gas in its application in Docket No. G–9813 renders the application filed by Central in Docket No. G–9813 moot.

The Commission orders:

Central Wisconsin Gas Company's application in Docket No. G–9813, filed December 23, 1955, is hereby dismissed as moot.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, and L. J. O'Connor, Jr.

LONE STAR GAS COMPANY, DOCKET NO. CP63–195

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 19, 1963)

On January 4, 1963, Lone Star Gas Company (Applicant) filed in Docket No. CP63–195 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 1.24 miles of 6-inch natural gas pipeline attached to and extending from a point on Applicant's existing Line E in a northerly direction to the proposed measuring station and including appurtenant metering and regulating facilities, to be located on the premises of the Campbell Soup Company Plant near the north boundary of the City of Paris, Lamar County, Texas.

The estimated volumes of gas requirements of the customer are as follows: 390,000 Mcf during the first year, 1,170,000 Mcf by the end of the fifth year, with an estimated peak day demand not to exceed 5,470 Mcf.

The estimated costs of the proposed facilities are $21,000 for the pipeline and $10,200 for the measuring station, all of which costs will be financed from working capital.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 4, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff Counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Lone Star Gas Company, is a natural gas company within the meaning of the Natural Gas Act and as heretofore found by the Commission in Docket No. G–442 (4 F.P.C. 565).

(2) The proposed facilities hereinbefore described will become an integral part of Applicant's existing interstate pipeline and will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission and the construction and operation thereof by the Applicant are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Lone Star Gas Company to construct and operate the facilities hereinbefore described, and to sell and deliver natural gas to the Campbell Soup Company in volumes not to exceed 5,470 Mcf per day in any one day for industrial purposes.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly Section 157.20 of said Regulations.

(C) Applicant shall advise the Commission of the date of completion of the facilities on or before September 1, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, and L. J. O'Connor, Jr.

SUN OIL COMPANY, DOCKET NO. RI60-370

ORDER DENYING MOTION TO TERMINATE PROCEEDING

(Issued March 19, 1963)

On July 15, 1960, Sun Oil Company (Sun) filed a motion requesting that the above-designated rate suspension proceeding be terminated.

On May 5, 1960, Sun tendered for filing a notice of change in its FPC Gas Rate Schedule No. 84, for the jurisdictional sale of natural gas to Northern Natural Gas Company (Northern) from the West Perryton Field, Ochiltree County, Texas (Railroad Commission District No. 10). Concurrently with the above tender, Sun tendered for filing the amendatory agreement to its rate schedule, upon which the notice of change was based. By order issued June 1, 1960, the amendatory agreement and the proposed increased rate of 16.5¢ per Mcf, designated respectively as Supplement Nos. 5 and 6 to its FPC Gas Rate Schedule No. 84, were suspended until November 5, 1960, when, upon proper motion, the proposed increased rate became effective subject to refund.

Sun's amendatory agreement provided that in return for Sun's waiver of its right to extract liquefiable hydrocarbons from the gas, Northern would pay an additional 1¢ per Mcf to Sun. In support of its motion to terminate, Sun states that Sunray Mid-Continent Oil Company (Sunray)[1] filed an identical amendatory agreement with the same purchaser in the same area, which was accepted by the Commission without suspension.

Sunray's filing of the amendatory agreement was not treated by the Commission as a change in rate but merely a contractual vehicle under which Sunray could at a future date file a notice of change in rate. It was accordingly accepted for filing as a contractual amendment.[2] Sunray thereafter tendered a notice of change in rate, based on the amendatory agreement, which was suspended by Commission order issued October 14, 1960, in Docket No. RI61-119. We also note that Sun's increased rate exceeds the applicable area price level announced in the policy statement.[3] Under these circumstances, no basis exists for Sun's motion to terminate.

The Commission finds:

For the foregoing reasons, Sun's motion to terminate the proceeding in Docket No. RI60-370 should be denied.

The Commission orders:

The motion to terminate the proceeding in Docket No. RI60-370, filed by Sun on July 15, 1960, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, and L. J. O'Connor, Jr.

THE OHIO FUEL GAS COMPANY, DOCKET NO. CP63-185

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 20, 1963)

On December 27, 1962, The Ohio Fuel Gas Company (Applicant) filed in Docket No. CP63-185 an application pursuant to Section 7(c) of the Natural

[1] Now Sunray DX Oil Company.

[2] The proper interpretation of the Commission's action was clearly set forth by the Commission in a letter issued July 25, 1960. Such interpretation was thereafter affirmed in *Sunray Mid-Continent Oil Company* v. *F.P.C.*, 290 F. 2d 552 (1961).

[3] Statement of General Policy No. 61-1, issued September 28, 1960, 24 FPC 818 (18 CFR, Chapter I, Part 2, Section 2.56).

Gas Act for a certificate of public convenience and necessity authorizing the construction and acquisition during the calendar year 1963 and the operation of unspecified minor natural gas transmission facilities and the sale of natural gas in the general area presently served by Applicant, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in establishing new delivery points for rendition of service to communities, not now being served, or expansion of service in and around communities presently served either at retail by Applicant or through sales to existing wholesale customers for resale.

Total peak day volumes to be delivered under the subject authorization will not exceed a maximum of 25,000 Mcf of gas, and volumes to be delivered through any single delivery point will not exceed 5,000 Mcf of gas, in the third year of proposed service.

The total cost of the proposed facilities will not exceed a maximum of $250,000, and no single project will exceed a cost of $50,000. The proposed facilities will be financed from the sale of securities to The Columbia Gas System, Inc.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 7, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, The Ohio Fuel Gas Company, an Ohio corporation having its principal place of business in Columbus, Ohio, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued August 21, 1945, in Docket No. G-371 (4 FPC 1033).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction, acquisition, and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction, acquisition, and operation of facilities, and the transportation and delivery of natural gas as proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate to require that none of the facilities constructed under the certificate herein granted shall be used for the transportation or sale of natural gas for consumption as boiler fuel for the generation of electricity.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration

of the authorization hereinafter granted, a statement showing by projects: (a) location of facilities, including delivery points; (b) communities served, including respective distributors; (c) description and actual final cost of facilities; (d) anticipated third year peak day and annual deliveries; (e) applicable rate schedules and expected third year annual gross revenue; and (f) the volumes of gas sold directly or for resale for interruptible industrial consumption.

(8) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the service hereinafter authorized should be conditioned upon receipt by Applicant or its wholesale customers of all necessary state and local authorizations to render the local service described.

(9) The authorization hereinafter granted should be limited to construction and acquisition during the calendar year 1963, and the total expenditures for facilities to be constructed and acquired thereunder should be limited to a maximum of $250,000, with no single project to exceed a cost of $50,000.

(10) Public convenience and necessity require that the estimated deliveries for the third year peak day at any single new delivery point should be limited to a maximum of 5,000 Mcf of gas and for all new delivery points established should be limited to a combined maximum of 25,000 Mcf of gas.

(11) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, The Ohio Fuel Gas Company, to construct and acquire during the calendar year 1963 and to operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (a) and (e) of Section 157.20 of such Regulations.

(C) None of the facilities constructed under the certificate herein granted shall be used for the transportation or sale of natural gas for consumption as boiler fuel for the generation of electricty.

(D) Applicant shall submit within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) location of facilities, including delivery points; (b) communities served, including respective distributors; (c) description and actual final cost of facilities; (d) anticipated third year peak day and annual deliveries; (e) applicable rate schedules and expected third year annual gross revenue; and (f) the volumes of gas sold directly or for resale for interruptible industrial consumption.

(E) The service authorized by paragraph (A) above is conditioned upon receipt by Applicant or its wholesale customers of all necessary state and local authorizations to render the local service described.

(F) The authorization herein granted is limited to construction and acquisition of facilities during the calendar year 1963, and the total expenditures for facilities to be constructed and acquired hereunder are limited to a maximum of $250,000, with no single project to exceed a cost of $50,000.

(G) The estimated deliveries for the third year peak day at any single new delivery point is limited to a maximum of 5,000 Mcf of gas and for all new delivery points established is limited to a combined maximum of 25,000 Mcf of gas.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Conner, Jr., Charles R. Ross and Harold C. Woodward.

EX PARTE COMMUNICATIONS, DOCKET NO. R-235

ORDER NO. 265

AMENDING § 1.4(d) OF RULES OF PRACTICE AND PROCEDURE

(Issued March 20, 1963)*

The Commission on March 13, 1962, adopted regulations (§ 1.4(d) of our Rules of Practice and Procedure) expressly outlawing all *ex parte* communications to the Commissioners, the hearing examiners, and other staff personnel responsible for aiding the Commission in the preparation of their decisions, in all contested proceedings pending before the Commission (Order No. 244, 27 FPC 521; 27 F.R. 2573). This regulation, in our opinion, has successfully achieved its primary objective of reminding participants in Commission proceedings of what has always been true—that the Commission operates in quasi-judicial capacity in rendering decisions which by statute or regulation are to be decided on the record after public hearing, and that in such circumstances private communications, be they directed to matter of fact, law, or policy, cannot be considered or entertained.

We have given further consideration to these regulations in the light of our experience thereunder and in context of the recommendations of the Administrative Conference of the United States, which has recently made a general survey of the problem as it affects the administrative process generally. Based upon this study, we are by this order revising our existing regulations to define more clearly the nature of the prohibited communications and to specify in somewhat greater detail the procedures which the Commission will follow if and when prohibited communications are nevertheless received.

The regulations as here amended continue the existing prohibitions against off-the-record communications by parties to proceedings or persons acting on their behalf, but make clear that the Commission's duty to determine contested proceedings on the hearing record equally precludes it from giving consideration to non-record pleadings or communications submitted by persons not associated with any of the parties who seek to present their views as to the contested issues by any means other than those provided for in our rules. In addition, the regulations as amended prescribe the procedures by which written communications of an *ex parte* nature received by the Commission will be associated with the Commission's public files relating to the proceeding. The regulations make clear that permission to file rebuttal information will be granted only in extraordinary circumstances where dictates of fairness so require and that the normal treatment of such communications will be to ignore them.

It appears that the amendments adopted herein pertain to Commission practice and procedure and hence that the notice requirements of section 4(a) of the Administrative Procedure Act are not applicable.

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*Published in the Federal Register on March 23, 1963 (28 F.R. 2899).

The Commission finds:

(1) The amendment adopted herein is necessary and appropriate for the purposes of administration of the Federal Power and Natural Gas Acts.

(2) Good cause exists that the amendment herein adopted becomes effective forthwith.

The Commission, acting pursuant to the authority granted by the Federal Power Act, as amended, particularly sections 308 and 309 thereof (49 Stat. 858; 16 U.S.C. 825g, 825h) and the Natural Gas Act, as amended, particularly sections 15 and 16 thereof (52 Stat. 829, 830; 15 U.S.C. 717n, 717o) *orders:*

(A) Paragraph (d) of § 1.4, Rules of Practice and Procedure, Subchapter A, Chapter I of Title 18 of the Code of Federal Regulations, is amended to read as follows:

(d) *Ex parte communications.* In order to avoid all possibilities of prejudice, real or apparent, to the public interest and persons involved in proceedings pending before the Commission—

(1) No person who is a party to, or his counsel, agent, or other person acting on his behalf, and no interceder in, any on-the-record proceeding, shall submit *ex parte*, off-the-record communications to any member of the Commission or of his personal staff, to the hearing examiner, or to any employee participating in the decision in such proceeding, regarding any matter at issue in any contested on-the-record proceeding, except as authorized by law; and no Commissioner, member of his personal staff, hearing examiner, or any employee participating in the decision in such proceeding, shall request or entertain any such *ex parte*, off-the-record communications. For the purposes of this paragraph, the term "contested on-the-record proceeding" means a proceeding required by statute, constitution, published Commission rule or regulation or order in a particular case, to be decided on the basis of the record of a Commission hearing, and in which a protest or a petition or notice to intervene in opposition to requested Commission action has been filed; the term "interceder" shall include any individual outside the Commission, whether in private or public life, partnership, corporation, association, or other agency, other than a party or an agent of a party, who volunteers a communication.

(2) All written communications prohibited by subparagraph (1) shall be delivered to the Secretary of the Commission who shall place the communication in public files associated with the case, but separate from the record material upon which the Commission can rely in reaching its decision.

(3) A Commissioner, member of his immediate staff, hearing examiner, or employee participating in the decision in such proceeding who receives an offer of any communication concerning any matter at issue in as on-the-record proceeding shall decline to listen to such communication and shall explain that the matter is pending for detemination. If unsuccessful in preventing such communication, the recipient thereof shall advise the communicator that he will not consider the communication, and he shall promptly and fully inform the Commission of the substance of the communication and the circumstances thereof, so that the Commission will be enabled to take appropriate action.

(4) Requests for an opportunity to rebut, on the record, any facts or contentions contained in an *ex parte* communication which the Secretary has associated with the record may be filed in writing with the Commission. The Commission will grant such requests only where it determines that the dictates of fairness so require. Where the communication contains assertions of fact not a part of the record and of which the Commission cannot

take official notice, the Commission in lieu of receiving rebuttal material normally will direct that the alleged factual assertion and any proposed rebuttal be disregarded in arriving at a decision. Nor will the Commission normally permit rebuttal of *ex parte* endorsements or oppositions by civic or other organizations by the submission of counter endorsements or oppositions.

(5) The prohibitions contained in subparagraph (1) hereof shall apply from the time the Commission announces that an on-the-record hearing will be held.

[Secs. 308 and 309, 49 Stat. 858; 16 U.S.C. 825g, 825h; secs. 15 and 16, 52 Stat. 829, 830; 15 U.S.C. 717n, 717o.]

(B) The amendments herein adopted shall become effective upon the issuance of this order.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Charles R. Ross.

APPLICATIONS FOR SALE, LEASE OR OTHER DISPOSITION, MERGER OR CONSOLIDATION OF FACILITIES OR FOR PURCHASE OR ACQUISITION OF SECURITIES OF A PUBLIC UTILITY, DOCKET NO. R-236

ORDER NO. 266

AMENDING § 33.1 OF REGULATIONS UNDER THE FEDERAL POWER ACT

(Issued March 20, 1963)*

This order amends § 33.1 of the Commission's Regulations under the Federal Power Act so as to clarify the applicability of the Commission's Regulations governing the filing of applications for sale, lease or other disposition, merger or consolidation of facilities and for the purchase or acquisition of securities of a public utility. As amended the section sets forth in more detail the situations where applications must be filed, and codifies the Commission's previous interpretative order (*Southern California Edison Co.*, Docket No. E-7049, issued November 5, 1962, 28 FPC 787) holding that Section 203 applies to the acquisition by a public utility of all electrical facilities, irrespective of the legal status of the seller, including facilities of muncipalities and intrastate companies not otherwise subject to the Federal Power Act.

The Commission finds:

(1) The amendment adopted herein is necessary and appropriate for the purposes of administration of the Federal Power Act.

(2) Since the amendment herein adopted involves matters of interpretation, practice and procedure, notice or hearing under Section 4 (a) of the Administrative Procedure Act is not required.

(3) Good cause exists that the amendment herein adopted become effective forthwith.

The Commission, acting pursuant to the authority granted by the Federal Power Act, as amended, particularly sections 203 and 309 thereof (49 Stat. 849, 858; 16 U.S.C. 824b, 825h) *orders:*

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*Published in the Federal Register on March 23, 1963 (28 F.R. 2900).

(A) Section 33.1 Subchapter B of Chapter I, Title 18 of the Code of Federal Regulations is hereby amended to read as follows:

§ 33.1 Applicability

The requirements of this part will apply to public utilities seeking authority under section 203 of the Federal Power Act. This authority extends to—

(1) The disposition by sale, lease or otherwise by a public utilty of the whole of its electric facilities subject to Commission jurisdiction or any part thereof of a value in excess of $50,000.

(2) The merger or consolidation, directly or indirectly of the facilities of a public utility with those of any other person having a value in excess of $50,000. This includes the acquisition by a public utility of the electric facilities of any other person whether or not such person is otherwise subject to the provisions of Part II of the Federal Power Act (including municipalities and companies not engaged in the interstate transmission or sale of electric energy.)

(3) The purchase, acquisition or taking by a public utility of any security of any other public utility.

[Sections 203, 309, 49 Stat. 849, 858; 16 U.S.C. 824b, 825h]

(B) The amendment prescribed herein shall become effective upon issuance of this order.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, and L. J. O'Connor, Jr.

PHELPS DODGE CORPORATION, PROJECT NO. 2304

ORDER ISSUING LICENSE (MAJOR)

(Issued March 20, 1963)

Application was filed on December 7, 1961 and supplemented on August 8, 1962, by Phelps Dodge Corporation (Applicant) of Douglas, Arizona, for license under Section 4(e) of the Federal Power Act (Act) for proposed major Project No. 2304, to be known as the Blue Ridge Project, to be located on East Clear Creek, a tributary of the Little Colorado River, and on the East Verde River, in Coconino and Gila Counties, Arizona, approximately 45 miles southwest of Winslow, Arizona, and affecting lands of the United States within the Coconino and Tonto National Forests.

Project No. 2304, as hereinafter described, will have as its primary purpose the replacement of water used by the applicant for industrial purposes to a water users association for irrigation purposes. The electric energy generated by the project will be used exclusively for the pumping of water for delivery in exchange for water used for mining and milling ore.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, have advised that the proposed project would not affect any existing or proposed projects of the Corps of Engineers, and that special terms and conditions in the interest of navigation are not deemed necessary for inclusion in any license for the project.

The Department of Agriculture, in reporting on the application stated that, under stipulated conditions, the construction of the proposed reservoir would enhance the recreational and fishing resources of the National Forest lands

within the project area. It recommended for inclusion in any license issued for the project, certain special conditions, which we adopt, in the interests of recreation and for the protection of the National Forests affected.

The Department of the Interior, in reporting on the application has recommended, for inclusion in any license issued for the project, certain special conditions in the interest of fish and wildlife resources and recreation in the area involved which we have also adopted in substance.

The State Land Commissioner of the Arizona State Land Department has issued permits to the applicant for the appropriation of the waters involved and the construction of an impounding dam to store the waters. The Arizona Fish and Game Department has been advised by the applicant that there is no objection to the management of the lake by the Department for public fishing and endorses the project "for this reason as well as an aid to the mining economy of the State."

On February 19, 1962, the City of Los Angeles through its Department of Water and Power petitioned to intervene and on February 20, 1962, the State of California, through its Colorado River Board, *et al.*, petitioned to intervene in this proceeding. The petitions allege that, by diversion of water above the proposed Bridge Canyon Dam and Hoover Dam, the project would adversely affect power production at both sites and also California's consumptive use of water below Hoover Dam. By answers dated March 1, 1962, the applicant challenges the standing to intervene of the petitioners and points out that only a minimal amount of water, approximately 11,000 acre-feet a year, is involved in the diversion.

We have considered the petitions to intervene and conclude that, assuming the petitioners' interests are sufficient to give them standing to intervene, they have not alleged grounds which would warrant the rejection of the application for license. The issuance of a license will not affect the legal rights of the petitioners to consumptive use of the waters of the Colorado River System. The project will cause a minimal reduction in the flow of the Colorado River into Lake Mead and consequently, by the same amount, the waters available for division among the lower Colorado River Basin States below Hoover Dam. California's legal rights in waters of tributaries of the Colorado River within Arizona are in litigation in the case of *Arizona* v. *California*, a case within the original jurisdiction of the Supreme Court of the United States which is presently pending decision [decided June 3, 1963, 373 U.S. 546]. California is urging in that case that Arizona's consumptive use of waters of tributaries to the Colorado River are a part of Arizona's basic entitlement to water under the Boulder Canyon Project Act. If California's position is upheld, the appropriation of water by this project under permit of the State of Arizona will not result in a reduction of water to which California is legally entitled below Hoover Dam but will be used to reduce Arizona's share of such waters; if Arizona's legal contentions are upheld, Arizona will be able to authorize this consumptive use of water without diminution of its rights to waters of the main stream of the Colorado River.

Section 13(c) of the Boulder Canyon Project Act requires this Commission to make any license which it issues on the Colorado River System subject to the Colorado River Compact and this, of course, we shall do. The Colorado River Compact makes the use of water for power production subservient to such consumptive uses as this project is designed to facilitate. The minimal amount by which the project may reduce the share of power available to petitioners from downstream projects is therefore not of great significance.

The Commission finds:

(1) The proposed project will affect lands of the United States.

(2) The proposed project would consist of:

(a) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purpose of the project, whether such lands or interests therein are owned or held by the Applicant or by the United States; such project area and project boundary being more generally shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2304–2) Regional and Vicinity Map;

Exhibit K: (FPC No. 2304–3) Detail Map of Project Area.

(b) The project would consist of a concrete arch dam about 160 feet high with spillway at elevation 6720 feet on East Clear Creek, creating a reservoir with a gross capacity of 15,000 acre-feet with usable storage of 12,800 acre-feet and having a surface area of 275 acres; intake and pumphouse on reservoir shore; a steel pressure pipeline about 9 miles in length to a balancing reservoir with a capacity of about 10 acre-feet at elevation 7276 feet on the Mogollon Rim divide between the Little Colorado and Verde River Basin; a penstock pipe about 2.5 miles long to a power plant with impulse wheel nozzle at elevation 5784 feet, connected to a 2800 kw generator (3730 horsepower); switchyard; 33 kv transmission line to pumphouse on reservoir shore; access road and other appurtenant facilities; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: Sheet 1 (FPC No. 2304–13) General Plan Arch Dam and Spillway; Sheet 3 (FPC No. 2304–14) Arch Dam and Buttresses Typical Sections; Sheet 5 (FPC No. 2304–15) Spillway from Reservoir; Sheet 6 (FPC No. 2304–10) Intake and Pumping Plant; Sheet 7 (FPC No. 2304–11) Pipeline and Penstock Profile and Details; Sheet 8 (FPC No. 2304–12) Power Generation Station.

Exhibit M: Two typewritten sheets entitled "General description of mechanical, electrical and transmission equipment", filed with the Commission on December 7, 1961.

(c) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(3) Applicant is a corporation organized under the laws of the State of New York; is duly qualified to do business within the State of Arizona; and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license for the project.

(4) Public notice of the application has been given. Petitions to intervene have been filed as recited above. No conflicting application is before the Commission.

(5) The issuance of a license for the project as hereinafter provided will not interfere or be inconsistent with the purposes for which the Coconino and Tonto National Forests have been created or acquired.

(6) The issuance of a license for the project as hereinafter provided will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(7) The project is best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, upon the terms and conditions hereinafter imposed.

(8) The installed horsepower capacity of the proposed project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charges is 3,700 horsepower. Power generated by the project will be used only for pumping water to the Verde River Basin to replace water taken from the Black River for metallurgical processes.

(9) The exhibits designated and described in finding (2) above conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Phelps Dodge Corporation (Licensee) under Section 4(e) of the Federal Power Act for a period of 50 years, effective as of January 1, 1963, for the construction, operation and maintenance of Project No. 2304 located on East Clear Creek, a tributary of the Little Colorado River, and East Verde River, Arizona, and affecting lands of the United States within the Coconino and Tonto National Forests, subject to the terms and conditions of the Federal Power Act, which is incorporated herein by reference as a part of this license and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act; and subject to the provisions of the Colorado River Compact.

(B) This license is also subject to the terms and conditions set forth in Form L–2, December 15, 1953, entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Lands of the United States" (17 FPC 62), which terms and conditions designated as Articles 1 through 24, are attached hereto and made a part hereof, except for Articles 13 and 17; and subject to the following special conditions set forth herein as additional articles:

Article 25. The Licensee shall commence construction of the project within one year from the effective date of this license, shall thereafter with due diligence prosecute such construction, and shall complete the project and place it in operation within three years of the effective date of the license.

Article 26. The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of the Federal Power Commission, to prevent, make advanced preparations for suppression, and suppress fires on the lands to be occupied or used under the license. The Licensee shall be liable for and pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the works appurtenant or accessory thereto under the license.

Article 27. The Licensee shall make releases into East Verde River at such time and at such volume that will not exceed the channel capacity. Channel clearing or improvements on the river shall be made only upon approval of plans for such by the Federal Power Commission.

Article 28. The Licensee shall make water releases into East Clear Creek at the dam during normal no-flow periods that will maintain natural pools of water

in the Creek between the dam and Barbershop Creek. The amount and time of water releases shall be determined by the Federal Power Commission upon its own motion or upon recommendation of the United States Forest Service.

Article 29. The transmission line shall not be located within 300 feet of the East Verde River, unless location within 300 feet of the river is approved in advance of construction by the Federal Power Commission, and Licensee shall file for approval in accordance with the Commission's rules and regulations, revised Exhibit F and Exhibit K, showing the location of the constructed line, within one year after the completion of the project.

Article 30. The Licensee shall prior to flooding, clear all lands in the bottoms and margins of the reservoir up to high water level, and shall dispose of all temporary structures, unused timber, brush, refuse, or inflammable material resulting from clearing of the lands or from the construction and maintenance of the project works. In addition, all trees along the margins of the reservoir which may die during operation of the project shall be removed. The clearing of the lands and the disposal of the material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission.

Article 31. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: *Provided*, That the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and, *Provided further*, That the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 32. The Licensee shall, within one year from the effective date of this license, file with the Commission a recretional use plan for the project which shall include not only recreational improvements which may be provided by others, but the recreational improvements the Licensee plans to provide.

Article 33. The Licensee shall construct, maintain and operate such protective devices and shall comply with such reasonable modifications of the project structures and operation in the interest of fish and wildlife resources, provided that such modification shall be reasonably consistent with the primary purpose of the project, as may be prescribed hereafter by the Commission upon its own motion or upon recommendation of the Secretary of the Interior or the Arizona Department of Fish and Game after notice and opportunity for hearing and upon a finding that such modifications are necessary and desirable and consistent with the provisions of the Act: *Provided further*, That subsequent to approval of the final design drawings prior to commencement of construction no modifications of project structures in the interest of fish and wildlife resources which involve a change in the location, height or main structure of the dam, or the addition of or changes in outlets at or through the dam, or a major change in generating units, or a rearrangement or relocation of the powerhouse, or major changes in the spillway structure shall be required.

Article 34. Whenever the United States shall desire, in connection with the project, to construct fish handling facilities or to improve the existing fish han-

dling facilities at its expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such fish handling facilities or such improvements thereof. In addition, after notice and opportunity for hearing the Licensee shall modify the project operation as may be prescribed by the Commission, consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish handling facilities constructed or improved by the United States under the provisions of this article.

This article shall not be interpreted to place any obligation on the United States to construct or improve fish handling facilities or to relieve the Licensee of any obligation under this license.

Article 35. The Licensee shall cooperate with the Arizona Game and Fish Department in the selection of locations and development of plans for installations to facilitate access by fishermen to the shoreline and water surface of Blue Ridge Reservoir.

Article 36. The Licensee shall refrain from removal of water from Blue Ridge Reservoir for delivery to the East Verde River whenever the water surface elevation is at or below 6,640 feet mean sea level.

Article 37. The Licensee shall within one year from the date of completion of the project file with the Commission revised Exhibits F and K to define the final project boundary. The project area shall be limited to that area actually needed for project operation and maintenance. The Licensee shall, prior to the submission of the revised exhibits to the Commission for approval, consult with the Regional Forester, U.S. Forest Service, Albuquerque, New Mexico, as to the project boundary.

Article 38. The Licensee shall pay to the United States the following annual charges:

(1) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, one (1) cent per horsepower on the authorized installed capacity (3700 horsepower) plus two and one-half (2½) cents per 1000 kilowatt-hours of gross energy generated during the calendar year for which the charge is made; or such other amounts as may hereafter be determined as necessary to reimburse the United States for the cost of Administration.

(2) For the use, occupancy and enjoyment of United States lands for project purposes, an amount to be hereinafter determined.

(3) For the use, occupancy and enjoyment of United States lands for transmission line right-of-way an amount to be hereafter determined.

Article 39. The Licensee shall after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, the benefits of which shall be shared equitably by the participants in such coordination. In the event the participants cannot agree thereon, the Commission shall equitably apportion the benefits after notice and opportunity for hearing, upon its own motion or upon motion of any party.

Article 40. The Licensee shall install additional capacity and make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 41. The rights of the Licensee to the waters of East Clear Creek shall be subject to and controlled by the Colorado River Compact.

(C) The exhibits designated and described in finding (2) above are hereby approved as part of this license.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, Charles R. Ross, and Harold C. Woodward.

AMERE GAS UTILITIES COMPANY, DOCKET NO. CP63-179

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued March 21, 1963)

On December 21, 1962, Amere Gas Utilities Company (Applicant), filed an application in Docket No. CP63-179, pursuant to Section 7(b) of the Natural Gas Act, for authority to abandon certain facilities used to compress and transport natural gas from fields in Raleigh County, West Virginia, consisting of two 220 horsepower gas engine driven compressor units complete with the auxiliary equipment and facilities integral thereto located at its Wingrove Compressor Station; also 16.5 miles of 5-inch pipeline extending from its interconnection with Atlantic Seaboard Corporation's 20-inch pipeline at Pipestem in Summers County, West Virginia, all as more fully described in the application.

The pipeline to be abandoned was constructed in 1932 and is used in conjunction with Applicant's newer 8-inch pipeline to supply the requirements of Princeton and Athens, West Virginia and Bluefield Gas Company, a wholesale customer. Applicant states that the 8-inch line can supply all present requirements of those customers and that the pipeline to be abandoned is in a deteriorated condition.

The compressor units are to be abandoned because the remaining gas reserves in the Raleigh Count fields have become depleted to the point where continued operation of the units is no longer warranted.

No change in service to existing customers will result from the proposed abandonment of the facilities. It is estimated that the annual operating expenses will be reduced by approximately $22,500.

Salvage value and cost of retirement of the facilities to be abandoned are $64,400 and $7,500, respectively.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 11, 1963, respecting the matters involved in and the issues presented by the application. No petition to intervene or protest to the granting of the application has been received. Staff Counsel moved orally at the hearing that the intermediate decision procedure be omittted and the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a natural gas company within the meaning of the Natural Gas Act and the facilities hereinbefore described are parts of the Applicants pipeline system and subject to the jurisdiction of the Commission.

(2) Depletion of the gas fields in Raleigh County, West Virginia makes unnecessary continued operation of the compressor units to be abandoned and deterioration of the 5-inch pipeline warrants abandonment thereof, as proposed.

(3) A request made during the public hearing by Staff Counsel for the omission of the intermediate decision procedure under Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure was unopposed by any party of record and, not having denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the said rules.

The Commission orders:

(A) Applicant be and is hereby permitted to abandon the facilities heretofore described, as more fully described in the application.

(B) Applicant shall advise the Commission as to the date of abandonment of the said facilities within 10 days thereafter.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP62-63; NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP62-66

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 21, 1963)

On October 29, 1962, El Paso Natural Gas Company (El Paso) filed in Docket No. CP62-63, and on October 23, 1962, Northern Natural Gas Company (Northern) filed in Docket No. CP62-66, applications to amend the Commission's order issued March 19, 1962, in the above-docketed proceedings, to authorize the exchange and delivery, on a best efforts basis, of up to 50,000 Mcf of natural gas per day for the period ending December 31, 1953, rather than the 30,000 Mcf "best efforts" exchange for a period ending December 31, 1962, heretofore authorized in these proceedings, all as more fully set forth in the applications herein.

El Paso and Northern have entered into a letter agreement, dated September 19, 1962, amending the original exchange agreement, to provide for the increase in exchange volumes for a period ending December 31, 1963.

Northern states that it is in an under produced position in Lea County, New Mexico, and has had approximately 15 million Mcf of allowables cancelled in the past in this field. Further, Northern states that it is currently carrying in excess of 6.5 million Mcf of underage. In order to alleviate this situation, Applicants request authorization to exchange the additional volumes and to extend the period of exchange, as proposed herein.

By letters, dated November 16, 1962, El Paso and Northern were granted temporary certificate authorizations for the proposed exchange.

Due notice of the filing of the applications to amend and opportunity for hearing thereon has been given by publication in the Federal Register on February 12, 1963 (28 F.R. 1358). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued March 19, 1962, 27 FPC 527, in Docket Nos. CP62-63 and CP62-66 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued March 19, 1962, in Docket Nos. CP62–63 and CP62–66 be and the same is hereby amended to authorize the exchange and delivery, on a best efforts basis, of up to 50,000 Mcf of natural gas per day for the period ending December 31, 1963, in lieu of the 30,000 Mcf per day for a period ending December 31, 1962, heretofore authorized by said order, all as hereinbefore described and as set forth in the subject applications.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, Charles R. Ross, and Harold C. Woodward.

H. L. HUNT, DOCKET NO. CI63–182

ORDER GRANTING RECONSIDERATION

(Issued March 25, 1963)

On February 5, 1963, H. L. Hunt filed pursuant to Section 19(a) of the Natural Gas Act and Subsection 1.34 of the Commission's Rules of Practice and Procedure, an Application for Rehearing and Reconsideration of the Commission's Letter Order issued January 7, 1963, rejecting Hunt's purported acceptance filed November 8, 1962 of a temporary certificate issued October 26, 1962, in these proceedings. That temporary certificate authorized Hunt to commence service of a sale under the Natural Gas Act of Michigan Wisconsin Pipe Line Company subject to several conditions. One of these conditions provided that the initial price should not exceed 17¢ per Mcf (14.65 psia) including tax reimbursements plus upward or downward Btu adjustments. Another specified that this initial price was to remain in effect pending the order, after hearing, on Hunt's permanent application in this docket or until otherwise changed by the Commission in this proceeding. Finally, the certificate provided that it was to "be accepted as issued and without reservations for further review after commencement of service. . . ." and that "If reconsideration is sought services hereunder shall not be started".

On November 8, 1962, petitioner filed a letter with the Commission purporting to accept the temporary authorization. In this letter, however, Hunt stated that it was doing so under "protest" and that "By such acceptance. H. L. Hunt does not admit the validity or legality of any of the conditions attached to the temporary authorization, and such acceptance is without prejudice to his rights, which are expressly reserved, to contest the validity and legality of the attached conditions in accordance with law". Moreover, according to Hunt's Application for Rehearing and Reconsideration "service was commenced immediately".

On January 7, 1963, the Commission rejected the purported acceptance as not complying with the conditions of the order and the present Application for Rehearing and Reconsideration followed.

Based on the material we had before us, as of January 7, 1963, Hunt's purported acceptance of the temporary certificate was properly rejected, since it did appear to contain reservation for further review after commencement of service in violation of condition (5). In its present application, Hunt reiterates its contention that condition (5) is void and without legal basis. We do not believe that we need to consider the merits of this argument, however, for the application goes on to state that Hunt "intended to accept the certificate, with the imposed conditions, without seeking review". In support of this contention, it points out that "reconsideration was not sought; instead, service was com-

menced immediately". In view of this statement in the present application (which counsel has certified he is authorized to make on behalf of Hunt), we must conclude that the language in the letter of acceptance which appeared to be a reservation constituted no more than an indication that Hunt's acceptance of this particular temporary certificate "with the imposed conditions, [and] without seeking review", was not to be construed as expressing its concurrence in the legality of the conditions or in any other way impairing Hunt's right to challenge them in other proceedings.

The Commission orders:

(A) The application of H. L. Hunt for reconsideration filed herein on February 5, 1963, is granted.

(B) The Commission's letter-order, issued January 7, 1963, rejecting Hunt's letter of November 2, 1962, is rescinded and the Secretary is directed to accept that letter for filing, *nunc pro tunc*, as of November 8, 1962.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, Charles R. Ross, and Harold C. Woodard.

GRAND VALLEY TRANSMISSION COMPANY, DOCKET NO. CP63-55; SUNRAY DX OIL COMPANY, DOCKET NO. CI62-1478

FINDINGS AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 21, 1963)

On September 6, 1962, as supplemented on October 16, 1962, Grand Valley Transmission Company (Grand Valley) filed in Docket No. CP63-55 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 12 miles of 2½-inch gathering lines and appurtenant facilities in order to extend Grand Valley's gathering facilities to connect additional reserves in the Westwater Field, Grand County, Utah, to its existing facilities, all as more fully set forth in the application as supplemented.

Grand Valley proposes to purchase and transport approximately 400 Mcf of gas per day from the Willard Pease Drilling Company, *et al.* (Operator), Applicant in Docket No. CI63-95, and approximately 1,000 Mcf of gas per day from Sunray DX Oil Company, Applicant in Docket No. CI62-1478. The additional gas supply is needed to enable Grand Valley to maintain deliveries to El Paso Natural Gas Company (El Paso) which were authorized by the Commission in Docket No. CI60-171. Grand Valley does not propose any increase in the contracted demand volume set forth in the presently existing sales contract with El Paso. The gas supply to be attached under the instant proposal will be utilized to upgrade the Btu content of existing supplies and thus will enable Grand Valley to satisfy its contract commitments with El Paso.

The facilities proposed in Docket No. CP63-55 are estimated to cost $110,168, to be financed from the issuance of capital stock and from bank loans.

On June 11, 1962, Sunray DX Oil Company (Sunray) filed in Docket No. CI62-1478 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas in interstate commerce to Grand Valley from the Westwater Field, Grand County, Utah, at an initial price of 12.0¢ per Mcf at 15.025 psia.

Temporary certificates were issued on November 16, 1962, to both Applicants herein to construct and operate the facilities and to render the service proposed.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 14, 1963, respecting the matters involved in and the issues presented by the applications herein. No petitions to intervene or protests to the granting of the applications have been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Grand Valley Transmission Company, a Nevada Corporation having its principal place of business in Salt Lake City, Utah, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of June 20, 1961, in Docket No. CI60–171 (25 FPC 1178).

(2) Applicant, Sunray DX Oil Company, will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and will, therefore, be a "natural-gas company" within the meaning of the Natural Gas Act upon the commencement of the service under the authorization hereinafter granted.

(3) The facilities hereinbefore described, as more fully described in the application, as supplemented, in Docket No. CP63–55, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisidiction of the Commission, and the construction and operation thereof Grand Valley are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The sale of natural gas hereinbefore described, as more fully described in the application in Docket No. CI62–1478, will be made in interstate commerce subject to the jurisdiction of the Commission, and such sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(6) The construction and operation of facilities by Grand Valley and the sale of natural gas by Sunray, together with the construction and operation of any facilities necessary therefor, are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(7) Public convenience and necessity require that the certificate issued hereinafter in Docket No. CP63–55 and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Grand Valley Transmission Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully

described in the application, as supplemented, in Docket No. CP63–55, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized in Docket No. CP63–55 shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

(D) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Sunray DX Oil Company, to sell and deliver natural gas and to construct and operate any facilities subject to the jurisdiction of the Commission necessary therefor, as hereinbefore described and as more fully described in the application in Docket No. CI62–1478, upon the terms and conditions of this order.

(E) The certificate issued by paragraph (D) above is not transferable and shall be effective only so long as Applicant continues the acts and operations therein authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations, and orders of the Commission thereunder.

(F) The grant of the certificate issued in paragraph (D) above shall not be construed as waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings and orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contract herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all the terms of the gas sales contract, particularly as to the cessation of service upon termination of said contract as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificates aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificates.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, Charles R. Ross, and Harold C. Woodward.

CITY OF HAZELTON, KANSAS, DOCKET NO. CP63–120

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued March 21, 1963)

On November 2, 1962, as supplemented on January 14, 1963, the City of Hazelton, Kansas (Applicant) filed in Docket No. CP63–120 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Panhandle) to establish physical connection of its transmission facilities with the proposed facilities of and to sell natural gas to Applicant for resale and distribution in said city, all as more fully set forth in the application, as supplemented.

Applicant proposes to construct and operate a distribution system in Hazelton as well as a transmission line connecting said system with Panhandle's main transmission line in Kansas. The total estimated cost of all proposed facilities is shown to be $71,000, which cost will be financed by the issuance of gas distribution system bonds.

The application shows Applicant's estimated third year peak day and annual natural gas requirements to be 157 Mcf and 18,440 Mcf, respectively.

On January 11, 1963, Panhandle filed an answer to the subject application stating that it will not oppose the requested order.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on February 14, 1963 (28 F.R. 1438). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principle place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G-254 (4 FPC 1081).

(2) Applicant, City of Hazelton, Kansas, is a municipal corporation incorporated under the laws of the State of Kansas and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in said city.

(3) It is necessary and desirable in the public interest that Panhandle be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 157 Mcf of natural gas per day to Applicant, as set forth in the application, as supplemented, and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Panhandle within one year from the date of issuance of this order.

(5) The requirement that Panhandle serve Applicant, as proposed, will not place any undue burden upon Panhandle nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Panhandle Eastern Pipe Line Company be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 157 Mcf of natural gas per day to Applicant, all as hereinbefore described and as set forth in the application, as supplemented.

(B) Applicant shall be prepared to receive natural gas from Panhandle within one year from the date of issuance of this order.

(C) Panhandle shall report to the Commission in writing the date of commencement of service to Applicant.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, and L. J. O'Connor, Jr.

PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY, WASHINGTON, PROJECT NO. 2225

ORDER FURTHER DEFERRING WORK SCHEDULE UNDER LICENSE

(Issued March 21, 1963)

By letter dated September 28, 1962, Public Utility District No. 1 of Pend Oreille County, Washington, licensee for major Project No. 2225 [issued, 20 FPC 753

(1958)], has requested further deferment of scheduled work under Article 28 of its license for constructed Sullivan Lake project. The project affects lands of the United States within the Coleville National Forest.

In its September 28, 1962, letter, the licensee states, among other things, that further feasibility studies made under Article 30 of its license, which are still in progress, indicates the advisability of constructing a new dam on Sullivan Creek below Outlet Creek and abandonment of both the Sullivan Lake and Mill Pond Dams which will not be required as part of the power production facilities of the project now under design, and the licensee requests that the work required of it under Article 28, be further deferred until the final project planning report is completed.

By order issued June 7, 1961, 25 FPC 1109, the Commission deferred until the fourth year certain work programs required to be done under Article 28 of the license during the second and third year.

Article 30 of the license requires the licensee to make a feasibility study for the enlargement of Sullivan Lake project, and to submit a report to the Commission on such study within six years from October 1, 1958, the effective date of the license. Article 24 of the license states that the purpose of the temporary repairs and maintenance required under Article 28 of the license is to protect and preserve the shoreline throughout the period of the investigation under Article 30. The Forest Service, Department of Agriculture, has reported that it has no objection to deferment of the work required under Article 28 of the license as modified by the above-mentioned Commission order.

The further deferment hereinafter granted for the work programs required under Article 28 of the license is within the six-year period fixed in Article 30 of the license for making and reporting on the feasibility study.

The Commission finds:

The licensee has in good faith and with due diligence prosecuted necessary repairs and maintenance of project structures as scheduled for the first year under Article 28 of the license, and futher temporary deferment of work presently scheduled for the fourth year is not anticipated to impair the safety of the structures.

The Commission orders:

(A) Article 28 of the license for Project No. 2225 is hereby further amended to read as follows:

Article 28. Licensee shall repair and modify the Sullivan Lake and Mill Pond Dams to make these structures safe and adequate in accordance with the following schedule, the period to begin as of the effective date of the license:

First year—Place test wells.

Fifth year—Drill and grout Sullivan Lake Dam. Construct retaining walls at Sullivan Lake Dam. Anchor and post-tension Mill Pond Dam.

Fifth year—Reinforce fill on wing dams of Sullivan Lake Dam. Place impervious blanket upstream of the Sullivan Lake Dam. Repair and enlarge spillway and gunite Mill Pond Dam.

Fifth year—Remove old timber bridge and dam upstream from Mill Pond Dam.

Fifth year—Complete any delayed work or other modifications necessary to place structures in a safe and adequate condition.

(B) This order in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgement of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, Charles R. Ross, and Harold C. Woodward.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. G–1471

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 21, 1963)

On April 9, 1962, Texas Gas Transmission Corporation (Applicant) filed an application for amendment of the Commission's order issued January 22, 1951, in Docket No. G–1471, 10 FPC 691, by increasing Applicant's originally authorized daily deliveries of natural gas to Spencer Chemical Company (Spencer) for industrial use by Spencer in its plant near Henderson, Kentucky. No new facilities are proposed by Applicant.

Applicant is presently authorized to deliver a maximum of 17,000 Mcf of natural gas per day to Spencer for use in the production of anhydrous ammonia, of which volume 7,000 Mcf is delivered as "high priority" service for use as raw material and 10,000 Mcf is delivered as interruptible service for use as fuel.

It appears that Spencer's expansion of its output of ammonia has caused an increase in its maximum daily requirement of "high priority" gas from 7,000 Mcf to 11,500 Mcf, necessitating the instant request for a 4,500 Mcf increase. Applicant and Spencer entered into an amendatory agreement executed on March 20, 1962, for the sale of the proposed additional volumes of natural gas.

Temporary authorization for the subject increase was issued to Applicant on June 19, 1962.

Public notice of the amendment requested herein was published in the Federal Register on July 18, 1962 (27 F.R. 6797). No protests, petitions to intervene or requests for hearing have been received.

The Commission finds:

It is appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order of the Commission issued January 22, 1951, granting a certificate of public convenience and necessity to Texas Gas Transmission Corporation in Docket No. G–1471, be amended as hereinafter ordered.

The Commission orders:

(A) The order of the Commission issued January 22, 1951, in Docket No. G–1471 be and the same is hereby amended by increasing the authorization for the delivery by Texas Gas Transmission Corporation to Spencer Chemical Company under "high priority" service from 7,000 Mcf of natural gas per day to 11,500 Mcf per day.

(B) In all other respects, said order issued January 22, 1951, in Docket No. G–1471 shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, Charles R. Ross, and Harold C. Woodward.

UNITED FUEL GAS COMPANY, DOCKET NO. CP63-178

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 21, 1963)

On December 21, 1962, United Fuel Gas Company (Applicant) filed in Docket No. CP63-178 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, replacement, and operation of unspecified natural gas compressor facilities, during the calendar year 1963, as hereinafter described, all as more fully represented in the application in this proceeding.

Applicant is engaged in the local production and purchase of natural gas extending through thirteen (13) counties located in southern West Virginia. It will conclude studies in 1963 of its major production and purchase operations in this Appalachian area to determine the most efficient utilitization of its facilities in connection with the depletion of existing properties and the additional drilling of proven acreage to the end that the present level of its production operations may be maintained.

Applicant states that previous changes in its local production and purchase activities and facilities inevitably result in some relocation, replacement, retirement of and/or addition to Applicant's compressor stations primarily engaged in compressing locally produced and purchased volumes of natural gas. In this connection, Applicant designates certain specific compressor stations which are solely engaged in the compression of locally produced and purchased natural gas which may or may not be affected as a result of anticipated revisions in production operations during 1963.

Applicant submits that as its production revisions are periodically concluded during 1963, it should be in a position to immediately initiate the necessary revisions or changes in the location and extent of its installed compressor horsepower.

The total cost of the proposed project will not exceed $2,000,000 and no single project will exceed a cost of $500,000. Applicant states that the proposed project will be financed from funds available to it during 1963 from its parent company, The Columbia Gas System, Inc., and will constitute a relatively small portion of the total financing to be consummated between these parties during the year 1963.

The proposed facilities will be used to render service to existing markets under presently filed rates and no change will be made in existing service.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 12, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, United Fuel Gas Company, a West Virginia corporation having its principal place of business at 1700 MacCorkle Avenue, S.E., Charleston, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission.

and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction, replacement, and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefore should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), and (e) of Section 157.20 of such Regulations.

(6) Public convenience and necessity require that Applicant should submit a statement by March 1, 1964, of the facilities constructed and placed in operation and the facilities, retired or relocated during 1963, showing by project: (a) description of facilities installed, (b) location of facilities, (c) facilities replaced, abandoned or relocated, (d) any abandonment of service and (e) actual final cost of facilities.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should obtain such authorization as may be required from the Federal Power Commission on the West Virginia Public Service Commission for any abandonment of service that may result by the replacement of facilities as authorized herein.

(8) The certificate issued hereinafter should be limited to construction and replacements during the calendar year 1963, at a total cost not to exceed a maximum of $2,000,000 with no single project to exceed a cost of $500,000.

(9) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, United Fuel Gas Company, to construct, replace, and operate natural gas facilities during the calendar year 1963, for service to existing markets, as hereinbefore described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit a statement by March 1, 1964, of the facilities constructed and placed in operation and the facilities abandoned, retired or relocated during 1963, showing by project: (a) description of facilities installed, (b) location of facilities, (c) facilities replaced, abandoned or relocated, (d) any abandonment of service, and (e) actual final cost of facilities.

(D) Applicant shall obtain such authorization as may be required from the Public Service Commission of West Virginia or the Federal Power Commission for any abandonment of service that may result from changes in facilities authorized herein.

(E) The certificate issued by paragraph (A) above is limited to construction during the calendar year 1963, at a total cost not to exceed a maximum of $2,000,000 with no single project to exceed a cost of $500,000.

[LETTER—ORDER REJECTING REFUND PROPOSAL]

MARCH 22, 1963*

EL PASO NATURAL GAS COMPANY,
Post Office Box 1492, El Paso, Tex.

(Attention: Mr. M. C. Norwood, Vice President).

GENTLEMEN: This is to advise you that your proposal in Docket No. G–4769 to refund a total of $35,144,486 to your jurisdictional customers as shown in the statement submitted with your letter dated January 15, 1963, is not acceptable to the Commission and is therefore hereby rejected.

The distribution of Federal income taxes to functions as proposed by El Paso is not consistent with the method used in Opinion No. 326 (22 FPC 260, 286–287). A proper distribution of Federal income taxes together with costs allocated per Opinion No. 326, as shown in the attached schedules, results in refunds to jurisdictional customers $764,998 greater in principal than that proposed by your company. The last column in Schedule 4 indicates the refund proposed overstates the proper refund to jurisdictional customers served from production facilities by $80,307 and understates the required refund to customers served from transmission facilities by $845,305, for a net understatement of total jurisdictional refunds of $764,998.

El Paso is hereby directed to file with the Commission on or before March 29, 1963, a statement consistent with this letter and schedules, showing distribution of refunds to its jurisdictional customers in appropriate amounts in Docket No. G–4769 with interest at 6 percent, in accordance with conclusions set out in the preceding paragraph. Upon approval by the Commission of El Paso's statement of refund, El Paso shall make the refunds as so approved within 30 days thereafter, and shall report to the Commission within said 30 days the amounts so refunded to each jurisdictional customer.

By direction of the Commission.

SCHEDULE 1.—*Additional refund required*

[FIT allocated on basis of investment in function, excluding wellmouth; return allocated on basis of investment in function; for calendar year 1955, adjusted]

Spread of FIT	Production	Other	Total
Net investment excluding wellmouth	$169,010,385	$294,704,080	$463,714,465
Percent of net investment in function	36.447	63.553	100.0
FIT assigned to function	$2,279,077	$3,974,014	$6,253,091

SCHEDULE 2.—*Additional refund required—Cost of service*

	Production	Other		Total
		Demand	Commodity	
Opinion No. 326 costs	$107,523,953	$23,769,121	$29,400,554	$160,693,628
Less return and FIT	19,895,982	11,648,259	11,648,259	43,192,500
Opinion No. 326 costs less return and FIT	87,627,971	12,120,862	17,752,295	117,501,128
Return (per El Paso)	14,885,132	9,083,757	9,083,757	33,052,646
FIT (Schedule 1)	2,279,077	1,987,007	1,987,007	6,253,091
Total cost of service	104,792,180	23,191,626	28,823,059	156,806,865
Less sales credited	3,742,123			3,742,123
Net cost of service	101,050,057	23,191,626	28,823,059	153,064,742

*Rehearing denied by order issued May 1, 1963, 29 FPC 869. Petition for Review dismissed on December 12, 1963, in *El Paso Natural Gas Company* v. *F.P.C.* (CA5 No. 20543).

SCHEDULE 3.—*Additional refund required—Cost allocation*

	Mcf—1955 jurisdictional	Allocation factors			Cost of service			Total
		Production	Other		Production	Other		
			Demand	Commodity		Demand	Commodity	
Deliveries from production:								
Resale:								
Nonjurisdictional		2.4500			$2,484,821			$2,484,821
Jurisdictional	2,653,885	0.4040			408,242			408,242
Direct		1.1798			1,192,189			1,192,189
Total		4.0428			4,085,252			4,085,252
Deliveries from transmission:								
Nonjurisdictional		10.0004	10.7439	10.421725	10,105,410	$2,491,085	3,003,860	15,600,355
Jurisdictional	564,675,713	85.9568	89.2561	89.578275	86,859,395	20,699,941	25,819,199	133,378,535
Total		95.9572	100.0	100.0	96,964,805	23,191,026	28,823,059	148,979,490
Total	567,329,598	100.0	100.0	100.0	101,050,057	23,191,026	28,823,059	153,064,742

SCHEDULE 4.—*Additional refund required—Additional refund*

	Jurisdictional cost of service total (Schedule 3)	Revenue at opinion 326 rates	Revenue less cost		Mcf, Apr. 15, 1955–Dec. 31, 1957	Additional refund at 6 percent rate of return	El Paso proposed additional refund	Additional refund required
			Amount	Per Mcf				
				Cents				
Deliveries from production: Resale, jurisdictional	$408,242	$419,314	$11,072	0.4172	7,851,675	$32,757	$113,064	($80,307)
Deliveries from transmission: jurisdictional	133,378,535	136,760,638	3,382,103	0.198946	1,727,016,326	10,343,895	9,498,590	845,305
Total	133,786,777	137,179,952	3,393,175	0.5981	1,734,868,001	10,376,652	9,611,654	764,998

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Charles R. Ross.

IDAHO POWER COMPANY, PROJECT NO. 1971

ORDER FIXING HEARING

(Issued March 22, 1963)

On August 4, 1955, 14 FPC 55, the Commission issued a license to the Idaho Power Company for Project No. 1971 (consisting of Brownlee, Oxbow and Hells Canyon developments on the Snake River in Idaho, Oregon). Article 35 of that license provided that the licensee would construct, maintain and operate such fishways as the Commission might subsequently prescribe. By order of February 12, 1958, 19 FPC 237, the Commission prescribed certain fish facilities for the project. By order of November 17, 1960, 24 FPC 962, this order of February 12, 1958, was in turn modified in certain particulars, and the licensee was directed to consult and cooperate with the Department of Interior and the fishing agencies of the States of Washington, Oregon and Idaho in the establishment of a program (to be undertaken at the licensee's expense) for testing and evaluating the fish facilities at the Oxbow and Brownlee developments, then nearing completion. Pending this study certain immediate actions with respect to the fish resources were ordered to be taken.

On January 25, 1963, Idaho Power filed an application to amend paragraph (c) (1) of the Commission's order of November 17, 1960, to change the water releases through the Oxbow spillway and spillway fish trap, asserting that studies indicate that there is no necessity for maintaining the continuous 1,000 cfs flow there prescribed. In consideration of this request, and before taking further action on this complex matter, we believe that a full review of the problem of the effect of this project upon the fish resources of the river and the possibilities for improvement in existing or proposed facilities should be undertaken.

The Commission finds:

It is appropriate and consistent with the public interest that a public hearing be held to review and evaluate studies of the fish passage problem and fish facilities for Project No. 1971 and that an appropriate order be issued on the record developed at the hearing.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commisison by the Federal Power Act, particularly Section 308 thereof, the provisions of the license for Project No. 1971, and the Commission's Rules of Practice and Procedure, a public hearing shall be held at 10 a.m., June 4, 1963, in Court of Appeals Court Room 7th Floor U.S. Court House (New), Portland, Oregon, (1) to review and evaluate the studies made pursuant to Article 34 of the license and the Commission's order issued November 17, 1960, (2) to review and evaluate the fish facilities installed at the Brownlee and Oxbow developments and determine what modifications, if any, should be made in such facilities, and (3) to determine what fish facilities should be installed at the Hells Canyon development of Project No. 1971.

(B) Protests or petitions seeking leave to intervene in this proceeding may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before May 6, 1963.

Commissioner Morgan *concurring*, filed a separate statement.

MORGAN, *Commissioner, concurring:*

I concur in the order fixing hearing herein, for the reasons set forth in the order and for the additional reasons set forth in my statement concurring in the accompanying order dismissing the complaint of the State of Oregon against the licensee of this Project, issued March 22, 1963 (p. 573, *infra*).

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Charles R. Ross.

IDAHO POWER COMPANY, PROJECT NO. 1971

ORDER DISMISSING COMPLAINT

(Issued March 22, 1963)

On October 15, 1962, the State of Oregon, through its Attorney General, filed a complaint requesting damages be assessed against the Idaho Power Company, Licensee for Project No. 1971. The complaint alleges that Licensee built a fishway in a negligent manner necessitating repairs which caused destruction of anadromous fish. The Licensee filed a motion to dismiss and an answer to the complaint.

On January 15, 1963, the State of Oregon filed a Petition for Leave to Amend Complaint for Recovery of Loss. The requested amendment asks that the Commission order, as an alternative to money damages, restitution of the fish destroyed by means of providing such facilities "as hatcheries, spawning and incubation channels, or other fish propagation or protective devices * * *."

Articles 34, 35 and 36 of the license for Project No. 1971 provide for detailed studies by the U.S. Fish and Wildlife Service to devise means and measures for mitigating losses to the fishery resources in the Snake River and for the construction, maintenance and operation of such fish protective devices, including fish hatchery facilities, by the Licensee as shall thereafter be ordered by the Commission upon its own motion or upon the recommendations of the Secretary of the Interior and the conservation agencies of the States of Idaho and Oregon. Pursuant to these articles certain fish facilities have already been prescribed by the Commission for the Brownlee dam upon recommendations of the U.S. Fish and Wildlife Service and the aforesaid State conservation agencies. The studies are continuing, and it is anticipated that the Commission will take such further action from time to time in connection therewith, either upon its own motion or upon the recommendations of the Federal and State conservation agencies as such studies reveal to be appropriate.

Dispositive of the present complaint, however, is the consideration that, assuming the State of Oregon has sustained damage by reason of the Licensee's negligence and is entitled to a recovery therefore, the Federal Power Commission is not the forum in which to litigate the issue of negligence and to determine the amount of the damage. Further, the Commission would be without authority to order the Licensee to compensate the State in this matter even if the amount were liquidated. The authority to entertain and enforce such claims under the Federal Power Act is vested in the several District Courts of the United States. See *Seaboard Air Line R. Co.* v. *County of Crisp*, 280 F. 2d 873 (CA5), *certiorari* denied, 364 U.S. 942.

Under these circumstances we find that the complaint should be dismissed.

The Commission orders:

The aforesaid complaint is hereby dismissed.

Commissioner Morgan *concurring*, filed a separate statement.

MORGAN, *Commissioner, concurring:*

The complaint of the State of Oregon, which we here dismiss, finally brings this Commission face to face—in its own forum—with a disaster resulting from its own licensing activity which has long lain obscured and ignored.

I wish to make it unequivocally clear that we hereby dismiss the State's complaint for the specific and technical reason—and only for the specific and technical reason—that this Federal Power Commission has no authority to adjudicate claims for money damages. That claim, therefore, must be litigated in the chambers of the District Courts of the United States.

But the issues raised by the disaster from which the State's claim flows go so deeply to the foundations upon and the purposes for which this Commission was established, and raise additional questions relating so profoundly to its continuing trusteeship of the water resources of this Nation, that an investigation of the facts and responsibilities of the calamity at last becomes a primary and unavoidable responsibility of this Commission.

Accordingly, the investigation of this matter we now authorize in the accompanying order issued March 22, 1963 is not undertaken for the sake of harassment or for vindictive purposes, whatever the ultimate findings may be. Nor is it undertaken for the sake of assessing penalties under the Act, for the purpose of determining the ligitimacy of the State's claims, or to determine the extent to which the existing standards and requirements of this Commission render the licensee vulnerable or invulnerable to the claims of the State of Oregon.

The purpose of that investigation is, among other things, to determine the reasons for wholesale destruction of a natural resource in order that we may determine and formulate the extent to which our supervisory procedures and programs should and can be changed to minimize the possibility that a debacle of the nature hereafter described will again occur. Because of the obscurantism in which this unprecedented resource loss has been concealed and enshrouded to date, I believe it useful to set forth the background environment in which that disaster occurred in some detail.

* * * * * * *

Flowing northward from southern Idaho, the Snake River forms the boundary between west-central Idaho and northeastern Oregon. There, two or three miles after passing the Brownlee reservoir and dam, the river encounters a rocky promontory jutting northeastward from the Oregon side. Viewed from above, this promontory has the appearance of a human thumb. The river meets it at the south side of the base, flows easterly to the tip, rounds the tip and flows back westerly to the north side of the base and then resumes its northward passage toward the Columbia. This promontory provides the site of Oxbow dam, the second (after Brownlee) of Idaho Power Company's three-dam scheme licensed by this Commission as Project No. 1971.

The Oxbow site is on the south side of the "thumb," about midway between base and tip, and during construction of the dam a temporary cofferdam was built just upstream from that site, forming a pool on the southern side of the promontory at its base. As in the case of all dams situated like this one, a diversion tunnel was required in order to transit waters, blocked by the cofferdam past the dry construction site.

In this case, however, it was not necessary to drive a new diversion tunnel, for near the base of the "thumb" there already existed a large tunnel, extending

northerly through the promontory, and almost ideally located[1] so as to transit water from the cofferdam pool above the construction site to a release point downstream. This tunnel, together with the ruins of an abandoned powerhouse at its outlet terminus on the north side of the promontory, were the remains of a power project erected by Idaho Power Company shortly after the turn of the century and subsequently abandoned many years before Project No. 1971 was licensed.

In order to make use of this existing tunnel for diversion, its concrete lining was upgraded, the inlet structure was rebuilt, and steel control gates were installed there. Because the tunnel was the only means of by-passing the entire river around the damsite during the full period of construction, and because large numbers of anadromous fish were at that time dependent on the river for passage upstream during annual runs, a concrete and steel fish-trapping structure was designed, reputedly to the satisfaction of the company, the fishery authorities, of the states involved, as well as those of the United States, and presumably to the satisfaction of this Commission.

Certain articles of the license issued by this Commission for the Oxbow project (Project No. 1971) provide as follows:

> *Article 4.* The construction, operation, and maintenance of the project and any work incident to additions or alterations, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall furnish to said representative such information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.
>
> *Article 35.* The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such fish ladders,

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[1] Ideally located for diversion the tunnel may have been, but ideally designed for that purpose it was not. Although others did so, we should not lose sight of the fact that this tunnel was originally designed as a penstock for the production of power, and was therefore designed to produce maximum pressure and velocity from a given head. A glance at the photographs of inlet and outlet structures is enough to show this. The inlet structure has two very large apertures, while the outlet consists of a single orifice appreciably smaller in size than either of the inlets. Obviously the design was intended to produce exactly what is desired for a power station: accelerated velocity, accomplished by conducting the water downward through a narrowing conduit, for the purpose of achieving increased pressure and increased speed simultaneously.

Diversion tunnels are not ordinarily built this way, and the licensee and its contractor, as well as the Commission's engineers, should have anticipated and guarded against serious problems posed by the escaping jet of high-speed and highly turbulent water at the downstream orifice. Serious damage to and failure of the fish-trapping facility at the outlet within less than 60 days after completion, under flows of only a fraction of the river's full potential, are eloquent proof that someone did not accurately analyze and prescribe for the situation. A cursory glance at the general layout drawing of these facilities and the official photographs of them taken before the disaster occurred will reveal many shortcomings to the engineer who is unwilling to gamble on the destructive force of an abruptly released jet of water under these conditions.

fish traps or other fish handling facilities or fish protective devices and provide fish hatchery facilities for the purpose of conserving the fishery resources and comply with such reasonable modifications of the project structures and operation in the interest of fish life *as may be prescribed hereafter by the Commission* upon it own motion or upon the recommendations of the Secretary of the Interior and the conservation agencies of the States of Idaho and Oregon. (Emphasis supplied.)

Instrument No. 6, entitled "Order Prescribing Fish Facilities," issued by this Commission February 12, 1958, contains the following language:

The Commission orders:

(A) The Licensee for Project No. 1971 shall construct, operate, and maintain the following fish facilities subject to such reasonable modifications as the Commisison may hereafter prescribe upon recommendation of the Secretary of the Interior, the Idaho Department of Fish and Game, and the Oregon Fish and Game Commissions:

(ii) Upstream migrant facilites at the Oxbow powerhouse and spillway, generally as shown on drawings Nos. DC–83–011, DC–83–017, DC–83–025, and *DC–83–201*, together with suitable means for transporting upstream migrating fish from the traps of the facility for release above the Brownlee dam.

(C) Nothing herein shall be construed as full compliance with the provisions of Article 35 of the license for Project No. 1971. (Emphasis supplied.)

Beginning in February 1958, the licensee built a fish-trapping facility, at the outlet or northern terminus of the diversion tunnel, of the type and having the appearance of the trapping facility shown by the general lay-out drawing DC–83–201, specified in Instrument No. 6 (Order Prescribing Fish Facilities). The degree of supervision exercised by the Federal Power Commission over this construction, as required by Article 4, Article 35 and Instrument No. 6 is presently undetermined, but that the Commission had full supervisory responsibility is crystal clear.

In late June of 1958, and before completion of the trapping facility, the river was completely blocked by the cofferdam and diverted through the tunnel, allowing construction of the dam to proceed at the site thus rendered dry. Above-water work on the fish-trapping facility proceeded so that it would be ready for up-river run of anadromous fish in early Fall.

During the Summer of 1958 it became evident that this trapping facility had been improperly designed or constructed, or both. Although river flows were not large during the period, and flows through the tunnel were restricted to about one-third of full river flow while Brownlee reservoir was being filled upstream, evidence of severe undermining of the trap by high-velocity water at the tunnel outlet became apparent less than 60 days after diversion began, and there were reports that portions of the trapping facility had cracked and settled appreciably. Reportedly, attempts were made to halt this settling by strapping with heavy cables and by back-filling with heavy rock, but the attempts failed.

Meantime a large Fall run of upstream migrant salmon had entered the Columbia, many of them bound for the Snake and for the spawning beds above Oxbow. Perhaps the only element of certainty in the situation was that a crisis of major dimensions confronted the company, its contractor, the State and Federal fishery agencies and this Commission. No one is on record as even hoping that the facility would survive operation in fast water until January, the usual time when the Fall run tapers off and stops.

Other than frantic attempts to stave off the inevitable, nothing seems to have been done to formulate an orderly plan of action to take effect when the inevitable finally occurred.

What finally did happen is, and always has been, veiled in inexcusable though perhaps understandable secrecy. The files of this Commission are notably deficient in comments or reports revealing exactly what was done, who did it, and who authorized its doing. Attempts at concealment seem to have been made by various persons involved, and were it not for the enormity of what was done, and the impossibility of total concealment, we might never have known that anything out of the ordinary occurred at all.

But what did occur was not merely out of the ordinary; the ensuing episode must surely have set the all-time record for wanton and irresponsible destruction of a natural resource (at least during a short period) under what the public trustingly supposes to be the watchful eyes of State and Federal agencies. Nor should we overlook the actions and responsibility of a Federally-licensed company, unqualifiedly charged with protection of the very natural resource which thereupon was ravished and decimated.

When one considers that the largest single factor resulting in the issuance of the license for Project No. 1971 was the sincere but misguided belief of many people that this inferior three-dam project could and would save the fishery resource of the Snake, while the superior alternate single-dam project would not, the ensuing events are all but incredible. That these and similar events have continued to the present day and have almost completely liquidated the fishery resource of the Snake River is attested by the investigation we now belatedly launch by our order issued March 22, 1963.

But let us return to the "Oxbow incident" which gave rise to the complain' we here dismiss.

Photographs in the files of the Commission dated August 26, 1958 show heavy repair work in progress on the trap. We know, from routine monthly reports of Idaho Power Company and its contractor, Morrison-Knudsen Company, that an engineering representative of the San Francisco office of this Commission visited the project on August 27 and 28. The files of this Commission do not contain a report from that representative covering this trip. Thus we have no official information with respect to his observations, if any, concerning that repair work and the causes for the damage; nor is there mention of the temporary cofferdam which presumably at that time was being constructed around the upstream end of the tunnel in preparation for sealing it off. It was sealed off, according to later admissions of the company, at 4:30 a.m. on August 31. Why the FPC representative did not remain at the project during the developing emergency or, at the least, report it, remains unexplained.

During this same period the company sought permission from fishery agencies and the Corps of Engineers to reduce flow at Brownlee from the previously prescribed 5000 cfs to 2000 cfs. According to the company this reduction was made at 10:00 p.m. on August 26. It is by no means clear whether permission for this reduction was granted, or it was, who granted it. It does seem clear that no subsequent permission was granted for any reduction below 2000 cfs, nor is there evidence that such permission was sought. It is unclear whether anyone, at any level, had authority to permit reduction of the entire river flow to zero, even if permission had been sought.

By not later than Sunday, August 31, 1958, in the midst of the Labor Day weekend and with large numbers of sportsmen scattered along the Snake, the first vanguard of the Fall salmon run had arrived in the reach of the river below Oxbow. This is known because they were seen, photographed, and reported by the sportsmen. Many of these photographs were later published by the

press.[2] There is nothing remarkable about all this, except for one thing: these salmon were either dying in small, rapidly drying pools in the middle of what only the day before had been the river-bed; or they were lying in the hot sun on dry rocks in the middle of the river's former course. No one had ever seen anything like this before.

And small wonder. On that day, for the first time since the Ice Age, the Snake River—for a distance of about 60 miles downstream between Oxbow and the Imnaha River—went completely dry.

To save the trapping facility from imminent collapse, the diversion tunnel at Oxbow had been sealed off by the licensee or its agents, and flow at that point had been reduced to zero. Between Oxbow and the Imnaha there not only was no flow sufficient to sustain the oncoming salmon run; there was no flow at all.

Numerous photographs, both official and unofficial, show absolutely no flow through the Oxbow diversion tunnel during the period of shut-off. The company admitted having stopped all turbines and closed all gates at Brownlee to reduce flow as close to zero as possible there in order to postpone to the last moment the overflow of the emergency cofferdam at the upstream end of the Oxbow diversion tunnel, as well as the main Oxbow cofferdam. The company went further and complained that if a strike had not delayed installation of tainter gates at Brownlee it would have been possible to maintain conditions approximating zero flow much longer than was the case.

The company has claimed that an unspecified amount of leakage through the main Oxbow cofferdam and a likewise unspecified flow of two minor creeks just downstream from the damsite furnished enough water to maintain fish life downstream to the Imnaha, some 60 miles away. This claim does not square with the numerous photographs in existence which show great stretches of the river bed as dry as a country road in summertime.

It is not known whether there was, in fact, any cofferdam leakage at Oxbow sufficient to pass the excavations at the main construction site, or whether there was any flow from the two creeks capable of doing more than to keep a few pools filled in the first mile or two downstream. What is known with certainty is that for all practical purposes about a 60-mile stretch of the Snake River was bone dry.

Further, the river remained shut off until the water began to breach the temporary cofferdam at the upstream end of the tunnel, at which time the main cofferdam was opened, flooding the main construction site and permitting resumption of flow in the dried-up 60-mile stretch of the river. A myriad of unofficial and press reports seems to indicate that the cofferdam was breached only after the downstream stretch of the river had been allowed to stand dry for a period lasting from "many hours" to "a couple of days or more," with intermittent flows through the tunnel to test repairs to the trapping facility. The repair work promptly washed out and was lost. The licensee claimed to have opened the main cofferdam at 2:00 p.m. on September 2.

In any event, it appears certain that a major navigable waterway upon which a major fishery resource was wholly dependent, both under the guardianship of this Commission, was completely blocked in violation of license terms for an undetermined but lengthy period.

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[2] On September 4, the *Record Courier*, a weekly newspaper published at Baker, Oregon, printed a lengthy, illustrated news story concerning the complete stoppage of the river. The editor of the paper, a correspondent for a nation-wide wire service and for a large metropolitan daily, filed wire stories to each. Yet no newspaper other than his own printed a single word concerning stoppage of the river until exactly a week later, when the Governor of Oregon forced the story into the open by summoning officials of the Idaho Power Company to his office and demanding an explanation.

Worse still, according to the licensee's own admission, the fish-trapping facilities at Oxbow were not restored to operation until October 6, although that date has not yet been verified. But if this date is accepted we must face the fact that in addition to drying up the stream, the licensee's operations resulted in a complete absence of fish-passage facilities at Oxbow for a period of about 37 days, during which an unknown but large percentage of the salmon run was wiped out. Many thousands of these fish died from disease and exhaustion when they became locked in the short stretch between the Oxbow cofferdam and Brownlee dam, where there apparently were no passage or effective fish-taking facilities.

Perhaps this is not the place to comment on the licensee's suggestion that all this is attributable to "an unknown and unforeseeable condition of nature, namely, fish behavior" and, more specifically, that the fish did not "follow the receding water" downstream. I have no idea whether it is reasonable to expect fish driven by the *upstream* migratory instinct to turn around and swim *downstream* promptly, merely because someone turned the river off. Nor do I know whether they showed an unreasonable refusal to accustom themselves to fresh air and sunshine when they landed high and dry on the bottom of what had, for thousands of years, been a river. All I am sure of is that nothing like this had ever happened to them or their ancestors before, and we would do well to be charitable in our expectations of them. It could even be pointed out that they were probably entitled to some observations concerning "an unknown and unforeseeable condition of nature, namely, [human] behavior." But they are only fish, and dead fish at that, so let us pass on to those more serious aspects of the matter which involve people—including their continuing rights and responsibilities.

That an extreme emergency existed during the latter portions of this affair is obvious. It is likewise obvious that, once the disaster became full-blown, great efforts were made—belatedly and unsuccessfully—by the licensee, the contractor and the various fishery agencies to minimize the destruction. But it is not enough for the Commission's purposes merely to fasten our attention on these efforts and permit them to obscure the numerous questions surrounding this incident which have never been answered and which, if we are to prevent similar occurrences in the future, demand investigation and constructive future programs. To begin a list of such questions (undoubtedly incomplete) we must go back to origins of the disaster—the design and construction of the trapping facility.

In the first few days after news of the disaster finally was made public by the Governor of Oregon, and the metropolitan press (hotly denying there had been any suppression of the story) finally printed it on September 11, a number of statements and reports were filed and printed by newspaper reporters, editorial writers, fishery agency personnel and eyewitnesses to the effect that the trapping facility had been built not on virgin bedrock, after excavation, but on the ancient concrete foundation of the abandoned powerhouse.[3]

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[3] In an unsigned "STATEMENT OF IDAHO POWER COMPANY AND MORRISON-KNUDSEN, INC. PRESENTED TO ROBERT D. HOLMES, GOVERNOR OF OREGON, SALEM, OREGON, SEPTEMBER 16, 1958," there appears the following paragraph:

> Incidentally, criticism was made that the fish trap was built on the old foundations of a powerhouse constructed at Oxbow early in the century. Actually, all of the foundations of the old powerhouse were blasted away except for two huge blocks of concrete. These concrete slabs do not support the outside retaining wall of the fish trap. The diver who inspected the foundation area stated that the support provided the fish trap by the two huge concrete blocks was partly instrumental in saving the lower end of the trap from collapse.

If these allegations are assumed to be true—and they have never been denied in explicit and convincing language, including the company's language in its motion to dismiss—several questions arise: Who, if anyone, approved such construction procedure? Was construction accomplished in accordance with approved plans, or as a departure from such plans? Why does Drawing DC–83–201 show no old concrete, but only good rock, beneath the trapping facility? Who approved the actual working plans, which must have differed from Drawing DC–83–201? Where are those plans?

Regardless of the way in which construction was accomplished, certain other questions arise: What, if any, public agency at any level had primary jurisdiction over actual working plans and actual construction procedures relating to the trapping facility? Who had final responsibility to approve the plans agreed on by the licensee and the fishery agencies? Were the working plans actually approved by any public agency? Who had authority to approve changes in those or previous plans? Were any changes actually approved? Where are those plans?

The events of August 31 and thereafter also raise unanswered questions: Was not complete stoppage of the river a violation of the terms of the license? Who had authority to sanction complete stoppage? Who did sanction it? Did the company ask for such sanction? If so, whom did they ask? Why was the main cofferdam not blown at the same time the diversion tunnel was sealed off, so that river flow could be maintained? Was approval of the company's failure to do so requested, and if so, by whom; and to whom was the request made? Was approval granted, and if so, by whom? How long after the diversion tunnel was sealed was the main cofferdam opened to permit resumption of flow? Who approved the length of this intervening period? When the cofferdam was finally opened, who issued the order? For what reason? Were all these decisions (resulting in stoppage of the river) company decisions, or were public agencies and officials involved?

Before the main cofferdam at Oxbow was re-sealed, was there any attempt made to reduce or stop flow at Brownlee in an effort to move the fish caught between the two dams back below Oxbow prior to sealing the cofferdam? Would such an attempt have offered any hope of feasibility? Was this discussed? If so, with whom? Who authorized resealing of the cofferdam before the fish trapped between it and Brownlee were removed?

There are official photographs in the files of the Commission, as well as other photographs, which cast doubt on the statement that the old slab was not involved in the undermining of the "outside" wall of the trap by high-velocity water. There are also photographs which show the "lower end" of the trap deeply undercut by the washout, with the old slab clearly visible and, indeed, suspended in air over the de-watered cavity.

Interpretation of these and other photographs logically poses the suggestion that the decision to make use of the old slab was probably the controlling decision which brought on the disaster. For the decision to use the slab was also the decision which specified the depth to which excavation would be made; namely that of the old slab itself. Once limited by this decision the company and its contractor undoubtedly saw no reason to, and did not, excavate below that level and hence did not, and could not, remove the rock immediately below the slab. And this is the rock which subsequently proved to be too unstable to resist the high velocity and turbulence of the water. Hence it was washed away.

It may be added that even the use of the old slab might not have brought on the disaster if the company or its contractor had carried the high-speed jet of water safely beyond the fish trap in a tight chute or flume, instead of releasing it beside the trap to attack the unstable rock on which the trap was built.

Apparently both decisions—the use of the old slab and the construction of a chute not half long enough—combined to produce disaster. That both decisions were for the purpose of cutting corners and shaving costs is self-evident.

Who, and representing what agency, was in supervisory control of this situation to safeguard the public interest during the whole of the emergency?

The Federal Power Act provides as follows:

Sec. 10. [As amended August 26, 1935.] All licenses issued under this Part shall be on the following conditions:

(a) That the project adopted, *including the maps, plans, and specifications,* shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes; *and if necessary in order to secure such plan the Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval.*

(b) That except when emergency shall require for the protection of navigation, life, health, or property, *no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works constructed hereunder . . .* (Emphasis supplied.)

There can be little doubt that "substantial alterations" were made in the plans and construction of the prescribed trapping facility which were "not in conformity with the approved plan" filed with the Commission as general layout drawing DC–83–201. And there can be little doubt that these changes had some bearing on the emergency—"disaster" is the more accurate word—which later developed. And there can be even less doubt that at the time these changes were made there was absolutely no emergency requiring such changes "for the protection of navigation, life, health or property," unless we give recognition to the desire of the licensee to take a rather serious gamble for the purpose of saving a rather inconsiderable amount of money.

As so often happens, this gamble cost the licensee—or rather its ratepayers—many times the savings sought for; and it cost the general public an incalculably greater loss in natural resources. Let us grant that the full consequences were neither welcome nor expected. Everyone concerned, I am sure, thought "It can't happen here."

But it did.

My concern, which I hope is shared by my colleagues, is that if we are to continue to serve as a trusted guardian of public resources we must learn from this experience; and that what we learn must be embodied in attitudes and procedures aimed at preventing, so far as is humanly possible, recurrence of such an episode anywhere, on any river, in the United States.

To this end, and to no other end, I commend my colleagues for setting in motion the fullest and broadest possible investigation of this episode as an important part of the even broader investigation we initiate today in our accompanying order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, Charles R. Ross, and Harold C. Woodward.

TRUNKLINE GAS COMPANY, DOCKET NO. G–20108

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 22, 1963)

On October 15, 1962, Trunkline Gas Company (Applicant) filed in Docket No. G–20108 an application in compliance with paragraph (D) of the Commis-

sion's order issued February 23, 1960, 23 FPC 435, in said docket, for authority to operate an experimental compressor unit on a permanent basis, all as more fully set forth in the application.

The order of February 23, 1960, authorized Applicant to construct and operate, on an experimental basis, two gas turbine-driven compressor units at its compressor Station No. 31, near Houston, Texas. If Applicant decided to operate the units on a permanent basis, it was required by said order to file an application for such authorization at least 60 days prior to the end of the test period.

Applicant states that testing of the larger of the two units, namely the 1050 horsepower unit, has been completed, and that it now desires to use such facility, as a permanent installation for standby purposes, at its compressor Station No. 66, near Epps, Louisiana.

The total estimated cost of the subject facility will be $240,000, of which $108,000 represents expenditures already made for the compressor unit and related items. Such estimated total cost has been and will be financed from cash on hand.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on February 9, 1963 (28 F.R. 1321). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued February 23, 1960, in Docket No. G–20108 be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued February 23, 1960, in Docket No. G–20108 be and the same is hereby further amended to authorize Applicant, Trunkline Gas Company, to install and operate at its compressor Station No. 66, near Epps, Louisiana, the compressor unit hereinbefore described, as more fully described in the application herein, as a permanent installation for standby purposes, unless authorized for other purposes in subsequent orders of the Commission.

(B) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, Charles R. Ross, and Harold C. Woodward

PHILLIPS PETROLEUM COMPANY, DOCKET NO. G–14244; TENNECO CORPORATION, DOCKET NO. G–18980;* OCEAN DRILLING & EXPLORATION COMPANY (OPERATOR), ET AL., DOCKET NO. CI60–743*

ORDER CONDITIONALLY APPROVING OFFER OF SETTLEMENT AND REISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 26, 1963)

On November 26, 1962 Phillips Petroleum Company filed an offer of settlement of the issues in Docket No. G–14244. This proceeding concerns Phillips' FPC Gas Rate Schedule No. 350, a contract with Transcontinental Gas Pipe Line

*We are entering this order in the latter two dockets for the exclusive purpose of affording applicants therein notice of Phillips' allegations and an opportunity to controvert them if erroneous.

Corporation for the sale of gas produced in south Louisiana. The proceeding was judicially remanded to us upon review of a certificate order issued September 4, 1958. *Transcontinental Gas Pipe Line Corp.*, 20 FPC 264, remanded, *P.S.C. of N.Y.* v. *F.P.C.*, 361 U.S. 195. This proceeding was severed by notice issued January 7, 1963 from those in Placid Oil Company, *et al.*, Docket No. G–13183, *et al.*

Phillips Petroleum Company Rate Schedule No. 350 originally covered the following offshore Louisiana properties: (a) Block 129–A, Eugene Island Area; (b) Blocks 172 and 184, Eugene Island Area; and (c) Blocks 39 and 40, West Cameron Area. Phillips has assigned its interests in all of these properties and alleges that in two of the three instances the effective date of the assignment preceded initial delivery from the properties.

Phillips represents that it commenced deliveries from Block 129–A, Eugene Island Area, on November 18, 1959. Thereafter, it assigned those properties, as of April 15, 1960, to Ocean Drilling & Exploration Company, Murphy Corporation and the Burmah Oil Western Corporation ("ODECO"); on May 27, 1960 the ODECO assignees ratified the contract between Phillips and Transcontinental. On June 13, 1960, ODECO applied for a certificate in Docket No. CI60–743,[1] relying on the remanded Phillips certificate "as to which Applicant has succeeded to all rights, duties and obligations accruing to and imposed upon Phillips by the Commission." On June 23, 1960, we granted ODECO a temporary certificate and designated its related FPC Gas Rate Schedule No. 3. Supplement No. 9 to that Rate Schedule provides that the assignment shall be effective as between Phillips and ODECO "as of the 15th day of April, 1960." Phillips represents that any sales or deliveries subsequent to April 15, 1960 were the sole responsibility of ODECO.

Phillips represents that it assigned its interests in Blocks 172 and 184, Eugene Island Area effective prior to initial delivery. We have approved the assignee's offer of settlement relating to this sale. *Petroleum Offshore Leaseholds, Inc. (Operator), et al., supra*, p. 453 (order issued March 12, 1963).

Phillips also represents that effective May 15, 1959, and prior to initial delivery, it assigned its interest in Blocks 39 and 40, West Cameron Area to Tennessee Gas Transmission Company. Tenneco Corporation has succeeded to Tennessee's interests and has pending a certificate application in Docket No. G–18980.[2] Only Phillips now has a rate schedule on file for this sale. Phillips represents that Tennessee or its successors have received 100% of the proceeds of all gas produced from these properties.

In general, the offer of settlement follows the pattern approved in *Texaco, Inc.*, 28 FPC 247 (order issued July 30, 1962 in Docket No. G–13169 *et al.*), and should be approved subject to the conditions prescribed below. As in *Shell Oil Company, supra*, p. 472 (order issued March 13, 1963 in Docket Nos. G–17560 and G–17399), we shall require that interest on the refund continue to accrue until the last day of the month on which the settlement proposal was filed. Phillips has requested that simultaneously with the approval of its proposal we terminate its certificate and cancel its Rate Schedule No. 350; in order to protect the successor, we shall make such action contingent upon our granting certification to Tenneco.

No party to Docket No. G–14244 has opposed the settlement proposal or waiver of the intermediate decision procedure in that proceeding.

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[1] Docket No. CI60–743 has been consolidated for hearing with the proceedings in Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

[2] On March 11, 1963 Tenneco Corporation filed an offer of settlement in Docket No. G–18980.

The Commission further finds:

(1) Phillips Petroleum Company (the applicant) is a natural-gas company within the meaning of the Natural Gas Act, as heretofore found, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The sales of natural gas proposed by the application, as amended, are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sales proposed by applicant in Docket No. G–14244, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and a certificate should be issued as ordered below effective as of the date of initial delivery; such certificate should terminate and the related rate schedule be canceled as provided below.

(5) The conditions attached to the certificate herein issued are required by the public convenience and necessity.

The Commission further orders:

(A) The intermediate decision procedure is waived in Docket No. G–14244.

(B) A certificate of public convenience and necessity is hereby reissued upon the conditions set forth herein, to Phillips, effective as of the date of initial delivery, for the sale of natural gas in interstate commerce for resale as proposed, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the application.

(C) The certificate issued by paragraph (B), above, is granted upon the express condition that applicant fully comply with the terms of the offer of settlement, which is expressly approved, *provided, however,* that interest on all principal amounts to be refunded shall continue to accrue through November 31, 1962.

(D) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposal, applicant shall report to the Commission, in writing, the amount of the refunds made, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with a release from its purchaser showing receipt of the refunds in conformity to the settlement as approved.

(E) Upon full compliance of applicant with all the terms of this order and of the settlement proposal, applicant shall be relieved of any further refund obligations in this proceeding and said proceeding shall terminate; upon such compliance plus issuance of a certificate in Docket No. G–18980 and the acceptance for filing of a related rate schedule, the certificate issued herein shall terminate and Phillips Petroleum Company Rate Schedule No. 350 shall be deemed cancelled.

(F) The certificate herein issued is not transferable and shall be effective only so long as the applicant continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(G) The grant of the certificate herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Regulations thereunder; *provided, however,* that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(H) The grant of a certificate herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against applicant, particularly any proceeding under Section 5 of the Natural Gas Act or Section 5(c) of the Outer Continental Shelf Lands Act, and is without prejudice to claims or contentions which may be made by the Commission, applicant, the Commission staff, or any affected party herein in any other proceeding.

Commissioner Morgan *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, Charles R. Ross and Harold C. Woodward.

SOUTHWEST GAS CORPORATION, DOCKET NO. CP63-176

DECLARATION OF EXEMPTION

(Issued March 26, 1963)

On December 19, 1962, Southwest Gas Corporation (Applicant) filed an application for exemption from the provisions of the Natural Gas Act, pursuant to Section 1(c) thereof.

Upon the basis of the application filed and the files of the Commission, it appears that:

(1) Applicant is a California corporation having its principal place of business in Las Vegas, Nevada, and is engaged in the transportation, distribution and sale of natural gas in the State of Nevada and in the States of Arizona and California.

(2) With respect to its Nevada operations, Applicant, pursuant to the Commission's order issued November 19, 1962, in Docket Nos. CP62-266 and CP62-267, has, as of January 31, 1963, abandoned and removed its California interstate facilities and sold to El Paso Natural Gas Company (El Paso) its Arizona interstate facilities.

(3) Applicant's Nevada facilities are not now physically connected with its facilities in Arizona or California, or with any other part of Applicant's facilities.

(4) Applicant purchases interstate natural gas from El Paso within the State of Nevada.

(5) All natural gas received by Applicant for its Nevada operations is ultimately consumed within the State of Nevada, and all of its facilities for said Nevada operations are located within said State; and

(6) The Public Service Commission of the State of Nevada has certified to the Federal Power Commission that it has and is exercising regulatory jurisdiction over the rates, service and facilities of Applicant.

WHEREFORE, The Commission declares, by reason of the foregoing:

Southwest Gas Corporation, with respect to the operations of its Nevada facilities, has been, as of January 31, 1963, exempt from the provisions of the Natural Gas Act, and the orders, rules and regulations of this Commission issued thereunder.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, Charles R. Ross, and Harold C. Woodward.

SOUTHWEST GAS CORPORATION, DOCKET NO. RP61-2

ORDER APPROVING PROPOSED SETTLEMENT, PRESCRIBING REFUNDS AND TERMINATING PROCEEDING

(Issued March 26, 1963)

These proceedings were instituted pursuant to Section 4 of the Natural Gas Act by Nevada Natural Gas Pipe Line Company (Nevada Natural), predecessor in interest to Southwest Gas Corporation (Southwest). On June 16, 1960, Nevada Natural tendered for filing Fourth Revised Sheet No. 4 to supersede Third Revised Sheet No. 4 of its FPC Gas Tariff, Original Volume No. 1. The new tariff sheet provided an increase from 50.50 cents per Mcf to 53.05¢ per Mcf in the price charged by Nevada Natural to its three jurisdictional customers, Southwest, California Pacific Utilities Company (California) and Boulder Natural Gas Company (Boulder).* Nevada Natural based its proposed increase on an increase of 2.55¢ per Mcf in the cost of gas purchased from its sole supplier, El Paso Natural Gas Company (El Paso). El Paso's increased charges, which became effective subject to refund on August 25, 1960, are still subject to Commission action in Docket No. RP60-3. Nevada Natural's (now Southwest's) increased charges have likewise been in effect subject to refund since August 25, 1960.

In 1961, Southwest filed an application for a certificate authorizing it to acquire by merger and to operate all the facilities owned and operated by Nevada Natural. By order of March 21, 1962, 27 FPC 583, in Docket No. CP62-110, the Commission approved the merger, and on March 23, 1962, the transaction was in fact consummated. Accordingly, sales by Nevada Natural to Southwest ceased on March 23, 1962.

In 1961, Southwest filed an application for a certificate authorizing it to acquire by merger and to operate all the facilities owned and operated by Nevada Natural. By order of March 21, 1962, 27 FPC 583, in Docket No. CP62-110, the Commission approved the merger, and on March 23, 1962, the transaction was in fact consummated. Accordingly, sales by Nevada Natural to Southwest ceased on March 23, 1962.

By order issued March 26, 1963, supra, in Docket No. CP63-176, the Commission approved as of January 31, 1963, Southwest's application for exemption under Section 1(c) of the Natural Gas Act. As a result, it is no longer necessary that the Commission establish future rates for Southwest, and consequently, the only rates in question in this Docket are (1) those charged by Nevada Natural for gas delivered to Southwest from August 25, 1960 through March 23, 1962, and (2) those charged by Nevada Natural and its successor (Southwest) for gas delivered to California and Boulder from August 25, 1960 through January 31, 1963.

On January 15, 1963, Southwest filed in this docket a Motion to Settle Rate Proceedings. That Motion proposes settlement on the following basis:

(1) That there be set aside for such ultimate refund as may be prescribed by the Nevada Public Service Commission an amount of money equal to 2.55¢ per Mcf multiplied by the number of Mcf purchased by Southwest from Nevada Natural during the period August 25, 1960, through March 23, 1962 ($129,715) with interest at the rate of 7% per annum, and,

*Formerly Citizens Natural Gas Company, Inc.

(2) That there be refunded to California and to Boulder an amount equal to 2.55¢ per Mcf multiplied by the number of Mcf purchased by each, respectively, during the period August 25, 1960, through and including December 31, 1962 (13,855; $11,990 to California, and $1,865 to Boulder), with interest at the rate of 7% per annum, and,

(3) That any reduction in the rate of 36.15¢ per Mcf paid by Southwest or its predecessor for gas purchased from El Paso during the period August 25, 1960 through December 31, 1962 shall be added to the 2.55¢ per Mcf reductions mentioned in (1) and (2) above.

The explanation for this offer of settlement as provided above is set forth in Southwest's Motion as follows:

> . . . Owing to several unusual factors, Applicant's revenues subsequent to the effective date of the rate increase [August 25, 1960] were greater than anticipated, particularly so in the test year, calendar 1961. A colder than normal winter heating season in the test year, combined with exceptionally large purchases of gas for steam electric power generation by Applicant's largest customer, produced sufficient additional revenues to provide Applicant with a fair and reasonable rate of return during the test period without taking into consideration the additional revenues resulting from the 2.55 cents per Mcf increase in rates to Applicant's jurisdictional customers.

The proposed settlement relates to the period August 25, 1960 through December 31, 1962, and appears to have been submitted on the assumption that Southwest's exemption under Section 1(c) of the Act would be effective as of January 1, 1963. However, the operations of Southwest here involved were subject to regulation under the Natural Gas Act through January 31, 1963, as set forth in the Declaration of Exemption issued in Docket No. CP63–176. It is appropriate, therefore, that the terms of settlement be made applicable to this additional month of service, and that appropriate refunds be made by Southwest for this period.

The Commission finds:

(1) The increased rates and charges contained in Southwest's Fourth Revised Sheet No. 4 of its FPC Gas Tariff, Original Volume No. 1, which have been in effect subject to refund since August 25, 1960, have not been shown to be just and reasonable or otherwise lawful under the terms and provisions of the Natural Gas Act.

(2) The settlement of this proceeding on the basis proposed is just and reasonable and in the public interest in carrying out the provisions of the Natural Gas Act, and such settlement should be approved and made effective, subject to the terms and conditions hereinafter ordered.

The Commission orders:

(A) Southwest shall set aside $129,715 together with interest thereon at the rate of 7% per annum, and such sum shall be held by Southwest for the purpose of making any refunds which may ultimately be ordered by the Nevada Public Service Commission for the period August 25, 1960 through March 23, 1962.

(B) Within 30 days from the date of issuance of this order, Southwest shall refund to California and Boulder, respectively, amounts equal to 2.55 cents multiplied by the number of Mcf purchased by each from August 25, 1960 through January 31, 1963, with interest thereon at the rate of 7% per annum.

(C) Within 30 days after receipt by Southwest of refunds from El Paso as a result of any Commission order prescribing a reduction in the price of 36.15¢ per Mcf charged by El Paso for gas delivered to Southwest or its predecessor for the period August 25, 1960 through January 31, 1963, Southwest shall refund

to California and Boulder an amount equal to the reduction in cost per Mcf multiplied by the number of Mcf purchased by each customer, plus applicable interest received from El Paso. Southwest shall also set aside as provided in paragraph (A), above, an amount equal to the reduction in cost per Mcf referred to herein multiplied by the number of Mcf purchased by Southwest from Nevada Natural during the period August 25, 1960 through March 23, 1962, plus applicable interest received from El Paso.

(D) Upon compliance with the terms and condition of this order, the proceeding in Docket No. RP61–2 shall be terminated.

Commissioner Morgan *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, Charles R. Ross, and Harold C. Woodward.

STREAM, INC., ET AL.

ORDER ACCEPTING PROPOSED OFFER OF SETTLEMENT AND ACCEPTING CONTRACT AMENDMENT AND NOTICE OF CHANGE FOR FILING

(Issued March 26, 1963)

On February 6, 1963, Stream, Inc., et al. (Stream) tendered for filing a notice of change in rate and an executed contract amendment to its FPC Gas Rate Schedule No. 1 covering the jurisdictional sale of natural gas to Texas Eastern Transmission Corporation (Texas Eastern) from the North Hostetter Field, Mc Mullen County, Texas (Railroad Commission District No. 1). The proposed increase would be from 11.42656¢ per Mcf at 14.65 psia to 14¢ per Mcf, including a base rate of 13.8733¢ per Mcf and a portion of the permitted 0.5¢ per Mcf dehydration allowance.

Concurrently with the filing of the notice of change and contract amendment, Stream submitted an Offer of Settlement, pursuant to Section 1.18 (e) of the Commission's Rules of Practice and Procedure. In its Offer of Settlement, Stream proposes to delete the favored-nation, price redetermination, and periodic escalation provisions from its rate schedule and to substitute therefor a revised schedule of 0.5¢ per Mcf periodic escalations at five year intervals beginning in February, 1963. Stream proposes to establish a settlement rate of 14.0¢ per Mcf, consisting of the base rate of 13.8733¢ per Mcf and a portion of the dehydration allowance.

In support of its offer, Stream cites the deletion of the favored-nation and price redetermination provisions from its gas purchase contract with Texas Eastern, and states that such provisions were important elements of consideration required by Stream under the contract for the long-term commitment of its gas reserves to the performance of the contract. Texas Eastern has concurred in the offer. No objections to the proposed settlement have been received.

The area price level announced in the Policy Statement[1] for increased rates in Texas Railroad Commission District No. 1, is 14.0¢ per Mcf. Since the proposed settlement rate of 14.0¢ per Mcf at 14.65 psia does not exceed the applicable area price level, and in view of the deletion of the favored-nation and price redetermination provisions from the subject rate schedule, it is believed that the public interest will best be served by accepting Stream's proposed settlement as hereinafter set forth.

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[1] Statement of General Policy No. 61–1, issued September 28, 1960, 24 FPC 818 (18 CFR, Chapter I, Part 2, Section 2.56).

However, we desire to make it clear that acceptance of the Offer of Settlement shall not be construed as approval of any future increased rate proposed by Stream under the periodic escalation provisions or otherwise.

The Commission finds:

The settlement proposed by Stream, as more fully set forth in the Offer of Settlement filed with the Commission on February 6, 1963, is in the public interest and is appropriate to carry out the provisions of the Natural Gas Act and should be approved as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by Stream, Inc., *et al.*, with the Commission on February 6, 1963, is hereby approved in accordance with the provisions of this order, and is effective as of the date of issuance of this order.

(B) The executed contract amendment and the notice of change tendered with Stream's Offer of Settlement on February 6, 1963, are hereby accepted for filing as Supplement Nos. 6 and 7, respectively, to Stream, Inc., *et al.'s* FPC Gas Rate Schedule No. 1, and are effective as of the date of issuance of this order.

(C) The acceptance of this Offer of Settlement is without prejudice to any findings or determinations that may be made in any proceedings now pending, or hereafter instituted by or against Stream, Inc., *et al.*

Before Commissions: Joseph C. Swidler, Chairman; Howard Morgan, Charles R. Ross and Harold C. Woodward.

AREA RATE PROCEEDING, DOCKET NO. AR61–1, ET AL.

ORDER REJECTING APPEAL

(Issued March 27, 1963)

On February 25, 1963, Sun Oil Company (Sun) filed a pleading herein entitled "Application for Rehearing." The pleading relates to the Commission Secretary's rejection of an appeal from a ruling of the presiding examiner requiring Sun to complete cross-examination of a staff witness by "deposition." Under the Natural Gas Act and our Rules, an application for rehearing will not lie until the issuance of a final order. However, we shall consider Sun's application as an attempted appeal from the Secretary's action.

Section 1.28(a) of the Commission's Rules of Practice and Procedure provides that rulings of presiding officers may not be appealed from during the course of hearing except in extraordinary circumstances where prompt decision by the Commission is necessary to prevent detriment to the public interest and that in such instance the matter shall be referred forthwith by the presiding officer to the Commission for determination. The presiding examiner refused to certify this matter to the Commission.

We are confident that the presiding examiner's ruling reflects an attempt to govern a massive proceeding fairly and expeditiously. Without expressing any opinion as to the appropriateness of the procedure generally, an isolated instance where the cross-examination of a particular witness has been ordered to be completed by "deposition" generally would not, in itself,, constitute the extraordinary circumstances referred to in our Rules. Sun has demonstrated nothing here which would lead us to conclude that the present case is an exception to this general rule. The refusal of the presiding examiner to find that extraordinary circumstances require certification of the matter to us was

thus justified. Furthermore, in the absence of such a finding by the examiner, who is most familiar with the case, or a clear abuse of discretion in failure to make such a finding, appeals on procedural matters during the course of a hearing should not and will not be entertained by the Commission. (See *United Fuel Gas Company*, 28 FPC 944, order issued December 5, 1962, in Docket No. G–20270, *et al.*)

Based on the foregoing, we find that the appeal filed by Sun on February 25, 1963, was properly rejected by the Secretary.

The Commission orders:

The appeal filed by Sun on February 25, 1963, from the Secretary's rejection of an appeal from the ruling on the presiding examiner is hereby rejected.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

AREA PRICE LEVELS FOR SALES OF NATURAL GAS BY PRODUCERS—AMENDMENT, DOCKET NO. R–234

ORDER NO. 264

AMENDING STATEMENT OF GENERAL POLICY NO. 61–1

(Issued March 27, 1963)*

The Commission has given further consideration to its Statement of General Policy and particularly the Second Amendment thereto (issued December 20, 1960, 24 FPC 1107; 25 Fed. Reg. 13799, 18 CFR 2.56), relating to offers of settlement in certain areas. We note that several statements therein could be expressed with a greater degree of clarity and that the date therein set (February 5, 1963), prior to which certain escalation clauses were not permitted to take effect, has become obsolete. We are, therefore, revising the Statement of Policy as herein ordered.

The Commission finds:

(1) No notice or hearing is necessary under section 4(a) of the Administrative Procedure Act.

(2) In view of the purpose, intent and effect of the amendment herein ordered, good cause exists for making it effective forthwith.

The Commission, acting pursuant to authority granted by the Natural Gas Act, as amended, particularly sections 4, 5, and 16 thereof (52 Stat. 822, 823, 830, 15 U.S.C. 717c, 717d, 717o), *orders:*

(A) Effective upon the issuance of this order, paragraphs (b) and (c) of § 2.56, Part 2, Statements of General Policy and Interpretations, Chapter I of Title 18 of the Code of Federal Regulations, are amended to read as follows:

"(b) Accordingly, the Commission provides that: For rate schedules from which all price escalation clauses are being eliminated except for provisions for future changes in tax reimbursement, the area price level for increased rates for natural gas sales by independent producers in Texas District Nos. 2, 3, 4, and 6 is 15¢ per Mcf at 14.65 psia, including tax reimbursement.

"(c) For rate schedules from which all price escalation clauses are being eliminated except for periodic escalation provisions as specified below and provisions for future changes in tax reimbursement, the area price level for

*Published in the Federal Register on April 3, 1963 (28 F.R. 3203).

increased rates for natural gas sales by independent producers in Texas District Nos. 2, 3, 4, and 6 is 14.6¢ per Mcf at 14.65 psia, including tax reimbursement: *Provided, however*, That such revised rate schedules may contain escalation clauses providing future separate increases in rate not in excess of one cent per Mcf, the first such escalation not to be tendered for filing prior to the effective date of the 14.6¢ rate, the second escalation not to be effective under the contract prior to February 5, 1968, and subsequent escalations to be effective under the contract at not less than five-year intervals thereafter."

[Secs. 4, 5, 16, 52 Stat. 822, 823, 730; 15 U.S.C. 717c, 717d, 717o.]

(B) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

AREA PRICE LEVELS FOR SALES OF NATURAL GAS BY PRODUCERS, DOCKET NO. R-237

ORDER NO. 267

SIXTH AMENDMENT TO STATEMENT OF GENERAL POLICY NO. 61-1

(Issued March 27, 1963)*

The Commission's Statement of General Policy No. 61-1 issued September 28, 1960, announced a price level of 18 cents per Mcf for initial sales in Texas District No. 3 (at 14.65 psia). The Statement of Policy specified that the price levels announced therein were to be "adjusted from time to time as such facts as may come before us compel such adjustments." The price level previously announced for Southern Louisiana was in fact adjusted by the Fourth Amendment to the Statement of General Policy on October 31, 1961 (26 FPC 661, 26 F.R. 10342), and the price level for District No. 4 was adjusted by the Fifth Amendment dated August 30, 1962 (28 FPC 441, 27 F.R. 8918, 18 CFR 2.56).

The Commission in its Opinion No. 383 in the *Texaco Seaboard* case issued this date, *infra*, p. 593, has had occasion to re-examine the question of the in-line price in Texas District No. 3 immediately prior to September 28, 1960, in light of the subsequent court decisions dealing with the initial pricing question in producer certificate cases.

We have also reviewed the sales in District No. 3 subsequent to September 28, 1960. We have carefully re-examined the appropriate level of initial ceilings in this district in light of present conditions in the area giving due consideration to the applicable court decisions and the factors set forth in our original statement of policy.

Just as was the case in our revision of the ceiling prices in South Louisiana and Texas District No. 4, our guiding purpose here is to arrive at a revised price which will enable the Commission to hold the line on new sales in this area at a level consistent with the public interest and, at the same time, to enable producers to obtain authorizations which provide them a reasonable basis for proceeding with their operations and furnishing needed supplies of gas. We conclude that, effective this date, the ceiling price level for initial sales in Texas District No. 3, inclusive of state taxes, shall be 17 cents per Mcf (at 14.65 psia). Accordingly,

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*Published in the Federal Register on April 3, 1963 (28 F.R. 3203).

The Commission finds:

(1) No notice or hearing is necessary under section 4(a) of the Administrative Procedure Act.

(2) In view of the purpose, intent and effect of the amendment herein ordered, good cause exists for making it effective forthwith.

The Commission, acting pursuant to authority granted by the Natural Gas Act, as amended, particularly sections 4, 5, and 16 thereof (52 Stat. 822, 823, 830, 15 U.S.C. 717c, 717d, 717o), *orders:*

(A) Effective upon the issuance of this order, the table in the note at the end of § 2.56, Part 2, Statements of General Policy and Interpretations, Chapter I of Title 18, Code of Federal Regulations, is amended by deleting the figure "18.0", the initial service rate for Texas District No. 3, and inserting "17.0" in lieu thereof.

[Secs. 4, 5, 16, 52 Stat. 822, 823, 830; 15 U.S.C. 717c, 717d, 717o.]

(B) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Commissioner Ross *dissenting*, filed a separate statement.

Commissioner Morgan *dissenting*, filed a separate statement.

Ross, *Commissioner, dissenting:*

I believe the guide line price for Texas R.R. District No. 3 should be 15.0¢ per Mcf under the rationale of my dissent to the Fifth Amendment to Statement of General Policy No. 61–1, 28 FPC 441, 444, and my statement to *Texaco Seaboard Inc., et al.*, Docket No. C161–118, *et al.* (Opinion No. 383). [p. 601, *infra.*].

Morgan, *Commissioner, dissenting:*

The purpose of the Natural Gas Act is to assure the availability of natural gas to the consumer at "just and reasonable" rates: the very heart of the Act requires all rates to be "just and reasonable." [1]

But this Commission's efforts to determine the "justness and reasonableness" of a rate involve "inordinate delays." [2] They are "nigh interminable." [3] Therefore, the Supreme Court has ruled that until we improve our methods for determining the justness and reasonableness of producer rates, we may not permit a producer to begin selling gas if his initial price "is not in keeping with the public interest because it is out of line." [4]

The Commission has adopted that emergency "in-line" rule as a substitute for regulation. It has decided—prematurely and unwisely, I think—to abandon its obligation to determine the justness and reasonableness of a particular rate; and instead to gamble all consumer rights to "just and reasonable" rates on the distant, unpredictable outcome of a grand design in which rates will be set on an area basis. It proposes to accomplish this in several long area rate proceedings, most of which have not been started.

It also proposes that consumers shall go on paying rates, the justness and reasonableness of which remain unknown and unknowable until area rates are established.

Thus has the determination of "in-line" initial rates become one of our gravest responsibilities.

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[1] *Atlantic Refining Co., et al.* v. *Public Service Commission of New York, et al.*, 360 U.S. 378 at 388 (1959).

[2] *Ibid* at 391.

[3] *Ibid* at 389.

[4] *Ibid* at 391.

Nevertheless, the courts repeatedly have found it necessary to tell this Commission that in determining these "in-line" rates, it may not rely upon or be influenced by prices whose excessively high levels are a result of its own, prior regulatory failures or misjudgments. The courts have had to impress on us that our duty to the public to hold the line "demands a real administrative effort to hold back prices;"[5] and that we must be very careful in selecting and weighing the prices we use to determine "in-lineness." The law, in other words, is that the initial prices at which we certificate producers must be based on prices that reflect, or were set as a result of, a genuine regulatory effort on our part.[6]

This is the law we must follow until we establish "just and reasonable" area rates. This rule has rendered the Commission's inflated "interim" price ceilings innocuous as a regulatory device: until recently the considerable gap between those ceilings and lower "in-line" prices has been of little consequence in major cases.

But a majority of this Commission now imply that even though those ceilings exceed the "line" that prevailed when they were set, we may use them in determining the price at which contracts executed after those ceilings were established should be certificated. The majority feel producers should be able to rely upon our "interim" ceilings. I could agree if those ceilings were "in-line," but they are not. They were not "in-line" when they were set; and they are not "in-line" now. I therefore cannot support this effort to improve our institutional image at the expense of the consumer.

For example, although we found that the "in-line" price in Texas District No. 4 was 15¢ at the time the 18¢ ceiling for that District was set, in the *Skelly* case the majority refused to apply that 15¢ determination to 16.5¢–18¢ contracts executed immediately after that 18¢ ceiling was set, on the ground that the contracting parties may have relied upon that out-of-line ceiling in setting their out-of-line prices.[7] The majority have also indicated elsewhere that producers who executed contracts at excessively high prices after our artificially high ceilings were set, also may invoke those ceilings in justification of their out-of-line prices.[8] Obviously, consumer and other interveners have no defense against such a fictitious standard for judging the reasonableness of out-of-line contract prices.

I believe that the use of this criterion (i.e., reliance on demonstrably excessive ceilings) is forbidden by the suspect price doctrine and the "in line" rule. I further believe that the presumptive validity that criterion falsely imparts to our excessively high interim ceilings makes it essential that those ceilings be reduced to present "in-line" levels immediately.[9]

Specifically, I believe that the action of the majority in here setting the interim ceiling for Texas District No. 3 at the excessively high level of 17¢ is

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[5] *Public Service Commission of New York* v. *Federal Power Commission*, 287 F. 2d 146 at 150 (1960).

[6] For the most comprehensive statement of the method to be followed, see Commissioner Ross' dissent (issued August 30, 1962) to the Fifth Amendment to Statement of General Policy No. 61–1, 28 FPC 441 at page 444.

[7] Opinion No. 362, issued August 30, 1962, 28 FPC 401.

[8] Specifically, see Order Severing and Consolidating Proceedings, issued August 30, 1962, in *Amerada Petroleum Corp., et al.* Docket No. CI62–1544, *et al.* 28 FPC 396; and see (accompanying) Opinion No. 383 in *Texaco Seaboard, Inc.*, issued March 27, 1963 in Docket No. CI61–118, *infra*.

[9] Further on this point, see my concurrence in our order issued January 30, 1963 in *Amerada Petroleum Corp., et al.*, Docket No. CI62–1544, *et al.*, 29 FPC 171, 173.

objectionable. Inescapably, it will result in the certification of prices exceeding the existing 15¢ price line in that District.[10]

That the existing "line" there is no greater than 15¢ is shown plainly by Appendix A to the examiner's decision in the accompanying Texaco case.[11] That Appendix shows that four of the 29 "untainted" permanent certificates this Commission has issued for Texas District No. 3 since September 29, 1960 (when the "in line" price there was 15¢) were certificated at 16.16¢–16.19¢; nine (including the three most recent certificates) at about 15¢; and sixteen at about 14¢.[12]

I therefore dissent, on the ground that the interim ceiling for Texas District No. 3 should have been reset at 15¢.

OPINION NO. 383

TEXACO SEABOARD INC., DOCKET NO. CI61–118: TEXACO INC., DOCKET NO. CI61–119; HUMBLE OIL & REFINING COMPANY, DOCKET NO. CI61–157

OPINION AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 27, 1963)*

Syllabus

1. Cost and trend evidence, substantially identical with that offered in *Skelly*, held not relevant in producer certificate cases. P. 595.
2. There is no reason to depart from conclusions reached in *Skelly* that "in-line" price in District No. 4 is 15 cents. P. 595.
3. Humble's trend evidence held "not germane" to certificate proceeding—principal criterion here is whether proposed prices were "in-line" at time of contract execution as required by *CATCO*. P. 596.
4. Certificated prices at 17.5-cent level and above discounted, since they either have subsequently been set aside (and before Commission for new decision), or would have been set aside, for failure to permit proper party to intervene. P. 597.
5. Commission *finds* "in-line" price in District No. 3 to be 16-cents per Mcf in view of history of prices and price patterns approximately contemporaneous with execution of Humble's contract. P. 598.
6. In arriving at "in-line" price in District No. 3, Commission considered not only field sales versus wellhead sales and dehydration, but other factors such as pressure, heating value, escalation and first month's production. P. 598.
7. Suspect price doctrine was not intended as a rigid exclusionary rule. P. 598.
8. Take-or-pay provisions in producer contracts are subject to final order in R–199, but in no event shall producers be required to accept provisions for less than 80 percent of annual contract quantities. P. 599.
9. Commission *issues* certificates of public convenience and necessity under Section 7, of the Natural Gas Act. P. 600.

Commissioner Ross *concurring*, in part, *dissenting* in part.
Commissioner Morgan *concurring* in part, *dissenting* in part.

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[10] For an analysis of the price line in Texas District No. 3 on September 29, 1960, when Statement of General Policy No. 61–1 was issued, see the dissents to (accompanying) Opinion No. 383, issued March 27, 1963, p. 601; 602, *infra*.

[11] Issued September 25, 1962, in *Texaco Seaboard Inc.*, Docket No. C161–117, p. 622, *et seq. infra*.

[12] Three other certificates have been issued for that District since January 29, 1960: two at 17.5¢ and one at 18¢. But these are "tainted" and need not be considered further.

* Initial decision appears on p. 603. Opinion No. 383–A issued August 27, 1963, 30 FPC 613.

P. F. Schlicher and *Frank H. Strickler*, for Texaco Seaboard Inc. and Texaco, Inc.

Kenneth W. Wagner, for Natural Gas Pipeline Company of America.

George H. Lawrence, for Humble Oil & Refining Company.

John E. Holtzinger, Jr., for United Gas Improvement Company.

John A. Lodge, for Consolidated Edison Company of New York, Inc.

James Van Vleit, for Illinois Power Company.

Justin A. Stanley, for Northern Illinois Gas Company.

Glen H. Bell, for Wisconsin Southern Gas Company, Inc.

Barbara M. Suchow, for New York Public Service Commission.

J. J. Danaher, for City of Chicago.

John W. Kern, III, for Village of Cerro Gordo.

Sherman S. Poland, for Central Illinois Electric and Gas Company.

Stanley A. Tweedle, for Northern Indiana Public Service Company.

James L. Bomar, Jr., for United Cities Gas Company.

Jerome J. McGrath, for Fuels Research Council, Inc., National Coal Association, United Mineworkers of America, Mid-West Coal Producers Institute, Inc.

Lloyd E. Dietrich, for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SWIDLER, *Chairman:*

This is a consolidated proceeding under Section 7 (c) and (e) of the Natural Gas Act in which Texaco Seaboard Inc., Texaco Inc.,[1] and Humble Oil & Refining Company seek certificates of public convenience and necessity authorizing sales by them to Natural Gas Pipeline Company of America of natural gas from various fields in Texas Railroad Commission Districts 3 and 4. The principal issue concerns the initial price under the contracts which were all executed on July 1, 1960, prior to the issuance of the Commission's Statement of General Policy No. 61–1. This case is before the Commission on exceptions filed by Texaco, Humble and the Public Service Commission of New York to the examiner's decision issued September 25, 1962.

As set forth by the presiding examiner all of the proposed sales by Texaco are from wells in District 4,[2] and the sale by Humble is in District 3.[3] Temporary certificates have not been issued for these sales. The Texaco contract provides for an initial base rate of 18.5 cents for a 1.8 cents per Mcf periodic increase on October 1, 1965, and a periodic increase of 1.9 cents per Mcf every four years thereafter. With tax reimbursements and a dehydration allowance Texaco's rate would be 19.9556 cents per Mcf and Seaboard's rate would be 19.9931 cents per Mcf, both at 14.65 psia. Humble's initial contract price is 20 cents per Mcf, and the price escalates 2.5 cents per Mcf every five years. The examiner notes that elements which the applicants must show including market, ability to deliver, financial capability and willingness to conform to the Commission's Rules and Regulations, are not in dispute. In addition it is uncontradicted that the contracts under consideration were negotiated at arm's length. The examiner states that the only issue in this proceeding is the appropriate initial price for the applicants' gas proposed to be sold in Texas Districts 3 and 4. Texaco would have it that the actual issue is whether the proposed sale is or will

[1] Texaco Seaboard has been merged into Texaco and except where otherwise specified, both will be referred to as "Texaco". Both were parties to the original contract with Natural Gas Pipeline.

[2] Luby and Petronilla Fields in Nueces County, Encinitas and Kelsey Fields in Brooks County and Tijerina—Cannales—Blucher Field in Jim Wells County.

[3] Sugar Valley Field in Matagorda County.

be required by the present or future public convenience and necessity. However this is expressed, price is the only issue remaining that relates to the public convenience and necessity. Our determinations here must be made in the light of our Opinion No. 362 in *Skelly Oil Co.*, 28 FPC 401, Docket No. G–18638, *et al.*, August 30, 1962, which, however, directly involved only District No. 4.

In District No. 4, the *Skelly* opinion found that the "in-line" price was 15 cents at 14.65 psia for those contracts executed in late 1958, in 1959 and in 1960 before September 28, 1960, when we issued our Statement of General Policy No. 61–1, 24 FPC 818. Our opinion was largely based on other sales in this district under contracts executed during the years 1958 through 1960. At the same time we rejected evidence introduced by Texaco, designed to show the replacement cost of the gas which Texaco sells. It presented industry-wide cost trends and also data on the costs of replacing gas consumed for the United States as a whole and for the Texas Gulf Coast area, using a variety of statistical sources and employing a number of estimates based on judgment. We held that cost of service and financial requirements evidence normally is not relevant in producer certificate cases and that the initial price in such proceedings will be determined by the "in-line" price in the area at the time the producer contract in issue was executed. With respect to the sales under contracts executed after September 28, 1960, we severed applications and consolidated them with other producer applications so that the applicants will have opportunity to show the effect of the Policy Statement and the Amendment issued August 30, 1962, 28 FPC 441.

Since, as found by the examiner, Texaco's cost and trend evidence in this case is substantially identical with that offered in *Skelly*, it does not serve any useful purpose to discuss this evidence further, nor the arguments in opposition made by UGI, Consolidated Edison, PSC, City of Chicago and our staff. Furthermore, there is no material difference in the staff's exhibit or presentation in this case (Exh. 48) from that offered in *Skelly*, so that the examiner felt bound by the Commission's opinion in *Skelly* and on the basis of the same facts and reasoning concluded that the appropriate in-line price for Texaco in District No. 4 was 15 cents per Mcf at 14.65 psia. Since the contract was dated July 1, 1960, before the issuance of the Policy Statement, he would condition the certificate at a price of 15 cents per Mcf.

We agree with the examiner that the record supports the conclusions as to the "in-line" price reached in *Skelly* and that there is no reason here to depart from them. The staff's exhibit is very similar and covers the same 1958–1960 period which is as applicable here as it was in *Skelly*. Therefore, we conclude that Texaco's sales in District 4 should be conditioned at a price of 15 cents per Mcf (14.65 psia).

Coming to Humble's proposed sale in District 3, we note this applicant contended generally before the examiner that an initial price above the 18-cent level was required to bring about the necessary production of gas. In support of this position Humble submitted trend evidence for Texas, the southwest producing states and the United States as a whole tending to show that while total gas reserves have continued to rise each year, the rise has not kept pace with the increase in demand. Its evidence also indicates a decline in drilling activity and productivity and the rise of producer's costs. Humble argued that because of declining producer profit margins, the increasing relative importance of gas and the direct stimulant provided by gas prices, such prices must contribute a greater share of total hydrocarbon revenue.

As further support for its rates Humble presented evidence showing that its initial price in District No. 3 represents a smaller increase in price than increases in drilling costs in Texas or the United States as a whole. Humble

also compared its 20-cent initial price with other permanently certificated sales at 20 cents in District No. 3, discussed below.

The interveners generally attacked the evidence presented by Humble. UGI and PSC urged that the price be fixed at 15 cents contending that prices above this level were either involved in sales to Coastal Transmission Company in a proceeding from which they were excluded,[4] in *Trunkline Gas Co.*, 21 FPC 704, where appeal from the Commission's denial of intervention was dismissed solely on the ground that the petition for review (filed after the Commission's final decision) was not timely,[5] or were reversed as a result of the litigation in *P.S.C.* v. *F.P.C.*, 295 F. 2d 140 (CADC). Consolidated Edison proposed that initial prices be limited to the area rate in order to eliminate rate questions from producer certificate cases; Chicago requested that the record be reopened to permit the introduction of cost evidence on a field or lease basis; and the staff, which presented extensive evidence on all of the District No. 3 contracts between January 1, 1955 and February 10, 1961, recommended that the certificate issued to Humble be conditioned at a level between 16 cents and 18 cents.

The examiner considered Humble's trend evidence, and noting that this is not an area rate proceeding, or for that matter any proceeding in which a just and reasonable rate is being fixed, concluded that trend evidence has no relationship to "in-line" prices. In determining an "in-line" price he thought it necessary to exclude certificate orders where the price determinations were reached on bases which the Court of Appeals decisions have considered erroneous, and he was further of the opinion that the highest price in an area was not necessarily the "in-line" price, but that a more satisfactory criterion would be the average price based on volumes. He found that the weighted average price for the entire period of the staff's exhibit, January 1, 1955, through February 10, 1961, was 15.11 cents per Mcf while the weighted average for 1960 contracts was 14.89 cents. In arriving at this result the examiner excluded prices for sales in 1955 and 1956 to Coastal at 17.5 cents and sales in 1958 to Trunkline at 20 cents. He concluded that there was no valid reason why Humble's proposed sales should be authorized at any higher price than Texaco's and therefore he conditioned Humble's certificate at an initial price of 15 cents per Mcf (14.65 psia).

In determining a proper initial price for *Humble* under this pre-Policy Statement contract it is appropriate to follow the method adopted in the *Skelly* case. Thus we will not use Humble's trend evidence which was in part embodied in its Exhibit No. 47 which was excluded by the examiner. This exhibit and Humble's testimony were designed to show industry and economic trends relating to the production of gas including (1) the decline in the productivity of drilling, (2) the increasing cost per foot drilled, (3) the effect of declining productivity and increased drilling cost on the cost of new supply, and (4) the inadequacy of revenues to induce the necessary drilling effort. As we said in *Skelly* with respect to Texaco's evidence this kind of evidence is not "germane to the certificate proceeding. The principal criterion that should be employed here is whether the proposed prices were 'in-line' at the time of contract execution as required by the Supreme Court's CATCO opinion."[6] Therefore further consideration of this evidence will not be undertaken.

The staff has introduced evidence to show comparatively in tabular form provisions of contracts in District No. 3 dated 1955 and later with total initial rates of 14.0 cents per Mcf and higher as accepted by us for both permanently

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[4] See *Houston Texas Gas & Oil Corp., et al.*, 16 FPC 118, 141–142, 17 FPC 303, 310.
[5] *P.S.C.* v. *F.P.C.*, 284 F. 2d 200 (CADC).
[6] *Atlantic Refining Co.* v. *P.S.C.*, 360 U.S. 378.

and temporarily certificated sales (Exh. 48). Since the Humble contract here was executed July 1, 1960, we should properly put greater emphasis on the calendar years 1958, 1959 and 1960. As in *Skelly* we may tabulate the producer contracts executed in those years and estimated first month's deliveries with respect to total initial prices as follows:

Price at 14.65 psia	Number of contracts granted permanent certificates	Estimated first month volumes	Number of contracts under temporary certificates	Estimated first month volumes
14.0	4	262,750	[1] 4-(4)	180,000
14.2	3	60,000	0	0
14.5	0	0	2-(2)	59,000
14.6	2	96,000	0	0
15.0	5	215,000	4-(3)	112,775
15.1	1	60,000	0	0
15.2	2	146,250	1-(1)	19,920
16.2 [2]	4	715,500	7-(1)	340,375
17.5	[3] 11-(11)	145,912	2	33,750
18.0	0	0	1	15,500
20.0	[4] 12-(3)	2,235,650	5-(1)	336,195

[1] The number in parenthesis indicates the number of temporary certificates subsequently made permanent. The one made permanent at the 20-cent level (G-19571) was conditioned at 17.0 cents in a settlement. See *Shell Oil Co., et al.*, Docket No. G-9446, *et al.*, August 1, 1962, 28 FPC 257, and *Shell Oil Co., et al.*, Docket No. G-15250, *et al.*, November 19, 1962.

[2] Actual price 16.16947 cents.

[3] The number in parenthesis is to indicate that all of these sales, to Coastal Transmission Corp., were involved in *P.S.C.* v. *F.P.C.*, 295 F. 2d 140 (CADC, June 15, 1961) where the Court reversed the Comission for denial of intervention by PSC in its March 31, 1960 order, in *Coastal Transmission Corp., et al.*, Docket No. G-18338, *et al.* Temporary certificates have been granted for all these sales. See *Coastal Transmission Corporation*, Docket No. G-18338, *et al.*, 26 FPC 677, November 2, 1961.

[4] The three sales shown in parenthesis are to Natural Gas Pipeline Co. of America. They are also involved in *P.S.C.* v. *F.P.C.*, *supra*, reversing *Peoples Gulf Coast Natural Gas Pipeline Co., et al.*, Docket No. G-19086, denying intervention to PSC in an order of March 21, 1960. Temporary certificates were subsequently issued to these producers in *Hassie Hunt Trust, Operator, et al.*, Docket No. G-19115, *et al.*, 26 FPC 689. The remaining sales in this price category are to Trunkline Gas Company and received certificates in *Trunkline Gas Co., et al.*, Docket No. G-15394, 21 FPC 704. The Commission's denial of intervention to PSC in that case was the subject of litigation, but the petition for review was dismissed on the ground that PSC's petition (filed after the final Commission decision) was not timely, *P.S.C.* v. *F.P.C.*, 284 F. 2d 200 (CADC, April 28, 1960).

The general pattern of permanently certificated sales in District No. 3 is clear. There is a scattering of contracts, but a substantial amount of gas is being sold in various price categories through 16.2 cents per Mcf without being subject to litigation. However, all the sales in the next category of 17.5 cents were involved in *P.S.C.* v. *F.P.C.*, *supra*. There are no permanently certificated 18-cent sales in the 1958–1960 period, but there are 12 sales in the 20-cent category. Three are involved in *P.S.C.* v. *F.P.C.*, and the remaining 9 in the *Trunkline* case, *supra*. It is thus apparent that prices at the 17.5-cent level and above must all be discounted since they either have subsequently been set aside (and are presently before us for new decision) or would have been set aside, for failure to permit a proper party to intervene, save for the procedural defect in the PSC review action in the *Trunkline* case.

In United Gas Improvement Co. v. *F.P.C.*, 283 F. 2d 817 (CA9, 1960), *certiorari* denied 365 U.S. 881 [7] the Court held that it would be an abuse of discretion for the Commission in establishing a price line to rely upon producer prices which are under review in pending court and Commission proceedings and are thus under a "cloud". The Court added that where a substantial number of certificated prices are thus under court or Commission review like prices in the same area though not currently under review ought to be regarded as "suspect". Nothing in this record demonstrates that this "cloud" or "suspicion" should be

[7] See also *United Gas Improvement Co.* v. *F.P.C.*, 290 F. 2d 133 (CA5), *certiorari* denied 363 U.S. 823.

disregarded or that these few high priced sales would have been approved as "in-line" if the precepts subsequently enumerated in *CATCO* and the *UGI* cases had been applied in deciding them.

The prices under temporary certificate shown on the table which, as we said in the *Skelly* case, are not as persuasive as the prices under permanent certificate, fall into a number of the same categories. It can be seen that there is a group of seven such contracts at the 16.2-cent level and others ranging both above and below. The only one made permanent above the 16.2-cent level was conditioned at 17 cents in a settlement.

As in the *Skelly* case, there are a number of unlitigated sales at 17.5 cents in District No. 3 to Coastal Transmission Corporation made under contracts in the years 1955 and 1956. We may repeat here that these were sales to a new company that had neither been given a certificate nor was yet in operation, and so may have taken place at higher prices than would have occurred under contracts with an established pipeline because of the inclusion in the price of an additional risk factor. Moreover, the Eastern Seaboard interveners were excluded from the hearings for reasons subsequent court decisions have shown were invalid, and the New York Commission's protest to the high rates as "out of line" were rejected by the Commission on the erroneous basis that this was a burden for the interveners rather than the applicants to meet. See *Houston Texas Gas & Oil Corp., et al.*, 16 FPC 118, 141–142 and 17 FPC 303, 310.

In view of the history of prices and the price patterns approximately contemporaneous with the execution of Humble's contract we are of the opinion that the in-line price in District No. 3 is 16.0 cents per Mcf at 14.65 psia. This represents a judgment figure based upon the pattern of prices ranging from 14.0 cents through 16.2 cents. Prices at 17.5 cents and above are in litigation or are the same as prices in litigation. Apart from this we note that the 17.5-cent level was established before the Supreme Court's decision in the *CATCO* case for the purpose of supplying a new pipeline and does not offer an appropriate guide in establishing the "line."

In arriving at this conclusion we have not overlooked Humble's contention that unlike some high price sales in District No. 3, Humble's contract provides that the gas will be gathered and dehydrated before delivery. Humble has submitted evidence to show that the gathering and dehydration which it is performing costs .95 cents per Mcf. However, we notice that in the staff exhibit most of the sales are designated as "field" sales meaning that a certain amount of gathering has taken place before delivery is made. For instance, at the 16.2-cent level three of the sales are "field" sales and one is a sale at the well. At the 17.5-cent level nine of the 11 contracts in the years 1958–1960, all of which were reversed after litigation, are "field" sales. At the 20-cent level the three litigated sales to Natural Gas Pipeline are "field" sales. The dehydration factor Humble estimates at .28 cent per Mcf, but an only slightly smaller dehydration reimbursement is involved in three of the sales at the 16.2-cent level. We may add that in arriving at our determination of the price "line" we have taken into consideration not only the matter of field sales versus wellhead sales and dehydration but other factors shown in the staff exhibit such as pressure, heating value, escalations and first month's production.

In connection with our determination we may further observe that in our opinion the suspect price doctrine was not intended as a rigid exclusionary rule. If it were, comparatively low prices at fair and readily defensible levels might be made subject to litigation at the will of some intervening party and our authority to determine proper initial prices under the Natural Gas Act thus limited for reasons that are unrelated to the public interest. Furthermore, we think that merely because prices are in litigation or have been set aside after

litigation and further proceedings ordered thereon, we should not entirely overlook the economic tendencies which they represent. But in such cases the prices cannot be taken at face value as reflecting firm prices in the area at the time, and can only be given substantial weight where (as here is *not* the case) the parties wishing to rely upon them have made a record showing of their actual effect upon the price line for other sales.

We also think it pertinent to note that the 16-cent price which we have set as Humble's initial price will not (except for the statutory suspension period) impair its ability to charge its full contract price until such time as we fix its just and reasonable price for the sale. See *Texaco* v. *F.P.C.*, 290 F. 2d 149 (CA5, 1961). But, if it so chooses to file for a higher rate, the consumers will at least benefit from the limited protection of a refund obligation. We recognize, of course, that unnecessarily large refund obligations can have detrimental effects upon all elements of the gas industry, and therefore do not intend to cut back the price below that at which significant sales of gas were permanently certificated in the area at the time of the Humble contract. We think it clear, however, that the possibility that the applicable just and reasonable area rate may turn out to be higher than the in-line rate we here establish, is at least balanced in the public interest scales by the ever present risk that the in-line rate in District No. 3 may be too high in relation to the just and reasonable rate for the gas we shall eventually determine.

At the time we issued our *Skelly* opinion on August 30, 1962, we issued a Fifth Amendment to our Statement of General Policy No. 61–1. This amendment decreased the initial ceiling price in Texas District No. 4 from 18 cents to 16 cents effective on that date. However, certain certificate applications consolidated with *Skelly* involved contracts executed after the issuance of the Policy Statement on September 28, 1960, but before the Fifth Amendment. We severed these applications from Skelly and consolidated them in *Amerada Petroleum Corporation, et al.*, CI62–1544, *et al.*, so that an appropriate initial price might be determined in the period between the issuance of the Policy Statement and the Fifth Amendment. In the present case it is in the public interest, in our opinion, to issue at this time effective immediately a Sixth Amendment to our Policy Statement, *supra*, p. 590, decreasing the ceiling price for Texas District No. 3 from 18 cents to 17 cents per Mcf. Unlike Skelly, the present proceeding involves no contracts executed in the interim period between the issuance of the Policy Statement and the present. However, we shall institute a proceeding in the near future that will consolidate existing applications involving contracts executed during this period and shall establish an appropriate initial price for these sales in the light of the Policy Statement, our determination in this proceeding and our issuance of the Sixth Amendment.

Both Texaco and Humble take exception to the examiner's condition that the take-or-pay requirement in each contract is subject to the Commission's final order in Docket No. R–199, which is a rulemaking proceeding. They contend that this condition makes the requirements of the certificate indefinite. We think it would be equitable to modify this condition so that in no event shall we require these producers to accept provisions for less than 80 percent of the annual contract quantities.

The Commission further finds:

(1) Texaco[8] and Humble are natural-gas companies within the meaning of the Natural Gas Act as independent producers of natural gas, as that term is

[8] Since Seaboard has been merged into Texaco, it is not necessary to issue a separate order or certificate to cover the former company, and accordingly the certificate to be issued here to Texaco, Inc., will also cover the sale proposed by Seaboard.

defined in Section 154.91(a) of the Commission's Regulations, engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption and such sales together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(2) Texaco and Humble are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(3) The sale of natural gas as proposed by Texaco and Humble, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity and a certificate authorizing the same should issue to each of them upon the terms and conditions of the order herein, which terms and conditions are required by the public convenience and necessity.

(4) The public convenience and necessity requires that the initial prices charged by Texaco and Humble for the sale proposed in their certificate applications in this proceeding be not greater than 15 and 16 cents per Mcf at 14.65 psia, respectively.

The Commission orders:

(A) Certificates of public convenience and necessity are hereby issued to Texaco and Humble for the sale of natural gas in interstate commerce for resale as proposed in the applications filed in Docket Nos. CI61–118, CI61–119 and CI61–157, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor upon the terms and conditions of this order.

(B) The certificates issued to Texaco and Humble are hereby conditioned to prohibit any total initial price, including all reimbursements and charges, greater than 15 and 16 cents per Mcf at 14.65 psia, respectively, from the date of the issuance of this order until such prices may be lawfully changed in the manner provided by the Natural Gas Act.

(C) The certificates of the producer applicants referred to above are conditioned so that the take-or-pay requirement in each contract is subject to the provisions of the Commission's final order in Docket No. R–199 as of the effective date of that order, provided, however, that the producers shall not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantities.

(D) The certificates issued herein are conditioned upon their acceptance in writing by the respective producer applicants within 30 days of the issuance of this order.

(E) The certificates issued herein are not transferable and shall be effective only so long as each of said applicants continues the acts and operations herein authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(F) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 of the Commissions Regulations under said Act requiring the filing of rate schedules for the service herein authorized and is without prejudice to any findings or orders which may have been or hereafter may be made by the Commission in any proceeding now pending or hereinafter instituted by or against the applicants. Further, the action taken in these proceedings shall not foreclose nor prejudice

any further proceeding or objection relating to the operation of any price or related provisions in the gas contracts here involved.

(G) The examiner's decision, to the extent not inconsistent herewith, is hereby adopted as part of this opinion and order.

(H) All exceptions not granted herein are hereby denied.

Commissioner Ross, *concurring in part* and *dissenting in part*, filed a separate statement.

Commissioner Morgan, *concurring in part* and *dissenting in part*, filed a separate statement.

Ross, *Commissioner, concurring in part and dissenting in part:*

Upon the same basic facts considered by the majority, I find the in line price in Texas District No. 3 to be 15¢ Mcf. The table on page 597 of the order shows that the only substantial contracts in the range between those at a suspect level and those at 15¢ are four permanent and seven temporary contracts executed by Tennessee at 16.2¢. This 16.2¢ price results from an indefinite pricing provision in Tennessee's older contracts, all of which were immediately suspended by the Commission.

More specifically, Tennessee executed over 100 contracts in the Gulf Coast area which contained a provision whereby the price to be paid would be redetermined each five years on the basis of the average of the three highest prices paid by any transporter of natural gas for public consumption in the area. This provision became operative on the basis of the following sales, resulting in a redetermined price in Tennessee's contracts of 16.2¢, which includes 0.2¢ dehydration reimbursement.

Paid by: Iroquois Gas Company, 16.658¢, 1954 price.

Paid by: United Gas Pipe Line Company, 16.05¢, Intrastate price.

Paid by: Natural Gas Pipe Line Company, 15.8¢, 1957 initial price.

Each of Tennessee's redetermined rates, when filed with the Commission, was suspended because it appeared that the rate was excessively high. Some of these suspension proceedings were later settled. In virtually all of the cases which were settled, the ultimate rate was fixed at 14.6¢ or 15.0¢.

Subsequent to the operation of this redetermination provision, Tennessee evidently followed its policy to offer the same 16.2¢ price with respect to all new purchases in the area. The four permanent and seven temporary certificates under consideration here are among those newer contracts executed by Tennessee. While the majority is not basing its determination directly upon rates which have been suspended; nevertheless, it is basing its decision on contracts which directly emanated from suspended rates. In my view, such action by the majority fails to pay sufficient attention to the admonition to the Commission in *Wisconsin* v. *F.P.C.*[1] to the effect that in considering rates ". . . the agency would be required to be alert for artificial impulses in such fair area price . . .". 380 F. 2d 389

By relying largely on the Tennessee contracts in this case, the majority is sanctioning and giving extensive effect to prices which have escalated as a result of an artificial, indefinite pricing provision. Actually, the majority in using a favored nation technique of its own making in reaching the 16¢ level. This is contrary to the Commission's statement on four separate occasions that such pricing provisions are undesirable, unnecessary, and incompatible with the public interest.[2]

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[1] *State of Wisconsin* v. *F.P.C., et al.*, 303 F. 2d 380 (CADC, 1961), *cert*, granted 369 U.S. 870.

[2] *Shell Oil Company*, 29 FPC 498, Opinion No. 382; Order No. 232A. 25 FPC 609; *Pure Oil Company*, 25 FPC 383; Order No. 232. 25 FPC 379.

For the foregoing reasons, I am unable to join the majority in its determination that the in line price in Texas District No. 3 is 16¢/Mcf. In my opinion, the record supports a price no higher than 15¢/Mcf.

Commissioner Morgan joins in this statement.

MORGAN, *Commissioner, concurring in part* and *dissenting in part:*

The majority here grant Humble a permanent certificate to sell Texas District No. 3 gas at 16¢, on the ground that the "in-line" price at the time of the Humble contract was 16¢.

I disagree.

The majority bases its determination on the prices at which Texas No. 3 producer contracts *executed* during 1958, 1959 and 1960 have been certificated. The Humble contract was executed on July 1, 1960.

A list of the dates on which all permanently certificated Texas No. 3 contracts (at 14¢ or higher) were executed between 1955 and February 10, 1961, along with their certification dates and prices, is set out in Appendix A to the Examiner's Decision.

That Appendix shows that twenty-seven contracts *executed* during the January 1, 1958–July 1, 1960 period have been permanently certificated.[1] Of these, eleven were certificated in the 14¢ price bracket, twelve in the 15¢ bracket, and four in the 16¢ bracket.[2] Obviously, the four 16.16¢–16.19¢ contracts do not alter the effect of twenty-three contracts for substantial quantities of gas at 14.0–15.9¢, executed after as well as before those four contracts. (This is particularly true when, as explained by Commissioner Ross, it is seen that those four were a function of indefinite pricing provisions which this Commission has repeatedly held to be contrary to the public interest.)

Plainly, therefore, the examiner's finding that the "in-line price" in Texas District No. 3 was 15¢ at the time of the Humble contract was correct and should not have been overruled.

The same conclusion is reached if the line is determined on the basis of the prices at which Texas No. 3 contracts were permanently certificated during January 1, 1958 to July 1, 1960. The Appendix shows that twenty-seven permanent certificates were granted during this period.[3] Of these, three were certificated in the 14¢ bracket, and fifteen in the 15¢ bracket. (The other nine were granted in 1959 at the "tainted" price of 20¢ and need not be considered.) Thus, on the basis of the "untainted" prices at which contracts were permanently certificated during this period, it is again plain that the price line was 15¢ in Texas District No. 3 at the time of the Humble contract.

Accordingly, by certificating the Humble contract at 16¢, the majority here fails to " 'hold the line' . . . in a manner as simple, direct and effective as possible"; and fails "to afford standby protection to the public pending" the imperceivably distant day when that contract will be subjected to "normal rate adjudicatory proceedings." [4]

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[1] Five other contracts executed during the latter half of 1960 have also been permanently certificated (in the 14¢—15¢ range). But they were executed after July 1, 1960, so they had nothing to do with the "price line" at the time the Humble contract was executed. They need not be considered further.

[3] Another contract executed during this period was permanently certificated at 18¢; and nine others at 20¢. But these are "tainted" and need not be considered further.

[2] Another eight were permanently certificated during the latter half of 1960 (two in the 14¢ bracket, two in the 15¢ bracket, two in the 16¢, and two at 17.5¢). But these eight had nothing to do with the "price line" at the time the Humble contract was executed. They need not be considered further.

[4] *United Gas Improvement Company* v. *Federal Power Commission*, 283 F. 2d 817 at 823 (9 Cir., 1960).

Specifically, because a 16¢ price is supportable only by (a) prices which had nothing to do with the "in-line" price of gas at the time of the Humble contract; or (b) by prices that "others [were] paying under certificates that were either uncontested, or were being appealed and are thus 'suspect,' or what others are paying based on such 'suspect' rates,"[5] I believe that the majority's action in certificating that contract at 16¢ constitutes "an abuse of discretion."[6]

I therefore dissent, on the ground that the contract should have been conditioned at 15¢

I also wish to disassociate myself from the majority's attempt to discard the restraints the "suspect" price doctrine imposes upon producer bargaining powers. The majority state that although they cannot "rely upon producer prices which are . . . under a cloud," they nevertheless feel free to give "substantial weight" to the "economic tendencies" of those suspect prices to raise the prices of other producers—*if* "suspect" prices have that effect.[7]

They do. The courts know they do: that is why the courts promulgated the suspect price doctrine—to tell us to disregard that "economic tendency." The suspect price doctrine is one of the principle instruments by which we can prevent initial prices from breaching the "line" the Supreme Court has told us to hold.[8] I therefore believe that the efficacy of the suspect price doctrine should be maintained, not discredited by sophistries.

Nor do I feel that doctrine is discredited by the majority's argument that absurd results would be reached if, by extending that doctrine to its logical extremes, it were applied to price situations to which it was never addressed. If this were done, the majority explain, then "comparatively low prices at fair and readily defensible levels might be made subject to litigation at the will of some intervening party and our authority to determine proper initial prices . . . thus limited." I agree, but I will wait until some sinister intervener makes that argument before answering it.

INITIAL DECISION

UPON APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

BINDER, *Presiding Examiner:* This is a consolidated proceeding under Sections 7 (c) and (e) of the Natural Gas Act wherein Texaco Seaboard Inc. (Seaboard), Texaco Inc. (Texaco), and Humble Oil & Refining Company (Humble), seek certificates of public convenience and necessity authorizing sales by them to Natural Gas Pipeline Company of America (Natural) of natural gas for resale from various fields located in Texas Railroad Commission Districts 3 and 4. All the contracts between the applicants and the pipeline were executed on July 1, 1960, *i.e.*, prior to September 28, 1960, when the Commission issued its Statement of General Policy No. 61–1, 24 FPC 818.[1]

Seaboard seeks permanent authorization to sell gas from the Luby and Petronilla Fields located in Nueces County, Texas. Texaco seeks permanent authorization to sell natural gas from the Encinitas and Kelsey Fields in Brooks County,

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[5] *United Gas Improvement Company* v. *Federal Power Commission*, 290 F. 2d 133 at 137 (5 Cir., 1961).

[6] Footnote 4, at 824.

[7] Majority at pages 598–599.

[8] 360 U.S. 378 (1959).

[1] The contracts between the applicants and the pipeline called for the sale of gas to Peoples Gulf Coast Natural Gas Pipeline Company (Peoples). However, following the execution of such contracts, Natural Gas Pipe Line Company of America became the successor in interest of Peoples and is now the buyer of the gas. Texaco and Seaboard jointly executed a single contract with the pipeline, and Humble executed a separate contract.

Texas and the Tijerina-Cannales-Blucher Field in Jim Wells County, Texas, under the terms of the same contract.

Both Texaco's and Seaboard's applications for certificates of public convenience and necessity were filed on July 25, 1960. Seaboard's application and Texaco's application have been docketed as Nos. CI61–118 and CI61–119, respectively.

All of the proposed sales by Seaboard and Texaco are from wells located in Texas Railroad Commission District 4.[2]

Humble Oil and Refining Company seek permanent authorization to sell gas produced from the Sugar Valley Field in Matagorda County which is located in Texas Railroad Commission District 3, and its application has been docketed as No. CI61–157.

The Texaco and Seaboard contract provides for an initial base rate (exclusive of taxes) of 18.5 cents per Mcf, for a 1.8-cent per Mcf periodic increase to 20.3 cents per Mcf from October 1, 1965, and a periodic increase of 1.9 cents per Mcf every four years thereafter until September 30, 1981, at which time the base rate would be 26 cents per Mcf. Included in the Texaco and Seaboard contract is a provision for 100 percent reimbursement of the present taxes incurred by the producers estimated to be 1.2056 cents per Mcf for sales made for Texaco and 1.2431 cents per Mcf for sales made by Seaboard, 75 percent reimbursement for any future taxes, .25 cents per Mcf hydration allowance, and a provision that Natural may deduct 2 cents per Mcf per stage of compression for all gas needing compression. Total initial rates for sales to Natural under the contract would be 19.9556 cents per Mcf for sales by Texaco and 19.9931 cents per Mcf for sales by Seaboard.

Humble's initial contract price is 20 cents per Mcf for natural gas to be produced from the Sugar Valley Field in Texas Railroad Commission District No. 3 from producing horizons down to 12,100 feet. The Humble contract escalates 2.5 cents per Mcf every five years.

The above-captioned dockets had originally been consolidated with Natural's Docket Nos. CP61–30 and CP61–185 and hearings were held with the pipeline and producer dockets consolidated, beginning with a prehearing conference on April 12, 1961 through April 25, 1961. On May 5, 1961, an order was issued by the Commission severing Natural's dockets from these proceedings. The latter order also provided for the omission of the intermediate decision procedure insofar as Natural was concerned.

Seaboard's production dedicated here is to be obtained from certain producing horizons down to 9100 feet not previously dedicated to Transcontinental Gas Pipeline Corporation. Also dedicated under this contract is acreage related to the Encino Field. This field is presently producing both gas well gas and oil well gas at depths between 5270 and 6880 feet.

Seaboard estimated the average daily deliveries under its contract to be 17,600 Mcf in the third year of production but Natural estimated the average daily deliveries at about half of this amount, *i.e.*, 8,768 Mcf in the third year of production.

Insofar as Texaco's gas is concerned the pipeline estimated the average daily deliveries of gas from the Encinitas, Kelsey and Tijerina-Cannales-Blucher Fields to be 14,535 Mcf (wet basis) in the third year production while Texaco's estimate of deliveries is 21,100 Mcf per day.[3]

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[2] At the time these proceedings were initiated Texaco Seaboard was a wholly-owned subsidiary of Texaco, Inc. and was managed by the parent. However, thereafter Seaboard was merged into Texaco. In these circumstances the certificate to be issued here will authorize sales to be made solely by Texaco.

[3] The present production horizons range in depths from 6700 to 8690 feet and produce gas well gas and oil well gas.

In connection with the matter of Texaco and Seaboard reserves dedicated to the performance of the contracts involved here the testimony is to the effect that "Natural shows the reserves from the fields under contract to be about 150 billion cubic feet. However, the seller's studies shows that the reserves are closer to 300 billion cubic feet." There is insufficient evidence in the record to determine which estimate is correct and despite the difference in the estimates there is no evidence in the record which would establish that the approximately 100 percent difference of opinion as to the amount of reserves had any reflection on the price agreed upon between the parties.

The contract between Texaco and Seaboard, on the one hand, and the pipeline on the other, provides that delivery is to be made at a central point in the field or at the tailgate of a processing plant; the gas is to be delivered at pressures of 1,000 psig; and the buyer may take each day up to 133⅓ percent of the contract quantity but not less than 66⅔ percent. The gas is to be of pipeline quality, and about 90 percent of the gas at issue is gas well gas. Texaco's and Seaboard's contract in this proceeding does not contain any indefinite or favored-nations clauses.

A witness for Texaco and Seaboard stated that the contracts for these companies would not be "triggered" but this witness could not state "definitely" that other sellers' favored-nation's clauses would not be triggered.

Natural estimates the average daily delivery of Humble's gas to be 5,750 Mcf in the third year of production, while Humble's estimate is 8,000 Mcf per day. The effect, if any, of this difference in estimates on the contract price is not reflected in the record.

The producer applicants seek to have permanent certificates issued authorizing the sale to Natural for resale in interstate commerce at the contract prices, *i.e.*, without any price conditions.

The contract prices were clearly in excess of those set forth in the Commission's first policy statement which was issued almost three months after the contracts were executed. Moreover, the contract prices were substantially in excess of the great majority of prices paid by purchasers in the past in Texas Railroad Commission Districts 3 and 4.

The elements (other than the propriety of the initial price) which an applicant must establish to show that public convenience and necessity would be served by the issuance of a certificate, including the market for the gas, the ability and willingness of the applicants to sell and deliver the quantities contracted for, feasibility of the proposal, the financial capability of the applicants, and their willingness to conform to the Commission's Rules and Regulations are not in dispute. In addition, it appears to be uncontradicted that the contracts under consideration were negotiated at arm's length and that none of the producer parties are affiliated with the purchaser.

There is only one issue in this proceeding and that is the appropriate public convenience and necessity initial price for the applicants' gas proposed to be sold in Texas Railroad Commission Districts 3 and 4.

The interveners and the Staff contend that while a permanent certificate should be issued, it should only be issued with price conditions attached thereto.

"It is the position of the Staff . . . that the highest price the Commission should certificate as being required by the public convenience and necessity is 18 cents per Mcf. Staff further contends that there is ample evidence namely in the Staff's field price exhibit, upon which the Commission should consider a price condition, pursuant to Section 7(e) of 16 cents per Mcf for the gas to be delivered under the three contracts."[4] In substance the Staff would condition

[4] See Staff brief, p. 4.

the initial prices in both Texas Railroad Commission Districts 3 and 4 at the same level.

The position of the City of Chicago is that "the proceedings [should] be reopened and that the applicants [should] be required to submit appropriate cost of service data including estimates where necessary, applicable to the fields from which service is proposed in these proceedings. If this course is not followed, it is recommended in the alternative that any certificate authorizations issued in these proceedings should include rate conditions requiring that the initial rates shall not exceed 18 cents per Mcf." [5]

The position of Consolidated Edison Company of New York, Inc. (Edison) is that the Commission "should not authorize initial rates in excess of the applicable rate area". In this connection, Edison had reference to the 18-cent per Mcf price level in Texas Railroad Commission Districts 3 and 4 referred to in the Commission's Statement of General Policy No. 61–1, as amended, prior to the Commission's recent decision in *Skelly*, Commission Opinion No. 362 and the adoption of the Fifth Amendment to the Policy Statement.

Both Public Service Commission of New York (PSC) and the Philadelphia Gas Works Division of United Gas Improvement Company (UGI) urged that the certificates sought here should be conditioned to 15 cents per Mcf for Humble's sale in Texas Railroad Commission District No. 3 and 14.6 cents for Texaco's and Seaboard's sales made in Texas Railroad Commission District No. 4.

The pipeline buyer, having entered into an agreement to pay the contract prices referred to hereinabove, filed no brief in this proceeding.

The applicants contend, in substance, that the evidence which they have offered shows that while the contract prices are higher than those generally prevailing in the area from which the natural gas is proposed to be sold that nevertheless such prices do not fall within the interdiction of *Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 378 (CATCO).

In summary, Texaco's and Seaboard's claim is that their evidence shows that (1) the current and future revenue requirement to find and produce natural gas in sufficiently adequate volumes to satisfy current and future public need which will have to be obtained for the entire natural gas industry for the United States, as a whole, after deducting liquid revenues is in the order of 24 cents per Mcf; (2) the current and future revenue requirement to find and produce natural gas in sufficiently adequate volumes to satisfy current and future public need which will necessarily have to be obtained by the entire natural gas industry operating in the Texas Gulf Coast area, as a whole, is in the order of 22 cents per Mcf after deducting liquid revenues; and (3) the current and future revenue requirements of Texaco and Seaboard to find and produce gas on a company-wide basis now and in the future are not less than the average industry requirements for such production.[6] Based upon these contentions Texaco and Seaboard advanced the claim that the current and future revenue requirements to find and produce natural gas are higher than the prices generally prevailing for gas sales now being made in Texas Railroad Commission District 4, and higher than the contract prices of approximately 20 cents per Mcf, and it must follow that the contract prices are "in line" within the meaning of CATCO and that a permanent certificate should be issued at the contract prices.

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[5] See pages 7 and 8 of City of Chicago brief.

[6] Texaco's presentation was confined to non-associated or gas well gas on the general theory that "the calculations based on gas well gas provide a more conservative cost per Mcf." (Texaco brief, p. 18)

This line of reasoning is hardly ineluctable and is certainly not "compelling" within the meaning of the Commission's first policy statement.

The specific evidence introduced by Texaco and Seaboard in the instant proceeding to justify the issuance of certificates at the contract prices consisted principally of the evidence offered by two witnesses R. O. Wilhelmi and W. V. Vietti. Mr. Wilhelmi is an independent consultant, and Mr. Vietti is an employee of the applicant. These witnesses sponsored Exhibits 44, 45, and 46.

Exhibit 44 is entitled, "Study and Data on Replacement Cost Trends and Supply and Demand"; Exhibit 45 is labeled "Future Gas Production Calculated at Present Finding Rates"; and Exhibit 46 which was the exhibit sponsored by Mr. Vietti, was labeled "Data on Production Cost and Trends".

Texaco's and Seaboard's exhibits in this case are substantially identical with their exhibits offered in *Skelly Oil Company, Texaco, Inc., et al.*, Docket No. G–18638, *et al.* The direct testimony of Texaco which was the subject of Commission Opinion No. 362, 28 FPC 401, 406 *et seq.*, offered in support of the exhibits is also substantially identical.

These exhibits and Texaco's testimony were considered at length in Commission Opinion No. 362 issued in the latter proceeding on August 30, 1962. The Commission, after lengthy consideration of the same exhibits and testimony as were offered here, stated, among other things, that Texaco's evidence was not "germane to the proceeding." The Commission also held that "We do not think it necessary or appropriate in a certificate proceeding to consider the evidence of area costs or financial requirements, or of individual company costs or financial requirements." The Commission held "that cost of service and financial requirements evidence normally is not relevant in certificate producer cases . . . ."

In the instant proceeding the same exhibits (which were received in evidence in *Skelly* under different exhibit numbers) were marked for identification but were not received in evidence as they were in *Skelly*. Instead, during the course of this proceeding the examiner advised the parties that he had very grave doubts that these exhibits were relevant or material to the issues to be determined.

After hearing the earnest and lengthly contentions of Texaco urging that these exhibits be received in evidence, the examiner reserved decision on the evidentiary question of their admissibility and advised the parties that this issue would be resolved in the examiner's initial decision to be issued herein. The Commission in *Skelly* stated clearly that the exhibits received in that proceeding (which were the prototype of Exhibits 44, 45, and 46 which were offered here) were not "germane" and were not "relevant". In these circumstances, Exhibits 44, 45, and 46 should be and hereby are excluded from evidence in this proceeding.

The Commission's opinion in *Skelly* contains a summary of Texaco's presentation in that case.[7] The presentation made by Texaco and Seaboard is the same as that summarized by the Commission in *Skelly*. It would only add to the length of this decision to recapitulate the facts concerning these exhibits already summarized in *Skelly*, and no useful purpose would be served thereby. However,

[7] It appears rather anomalous that the Commission first dissected Texaco's evidence, held it not to be "germane" or "material" and then severed the Texaco Docket CI61–961 because the contract calling for an initial price of 16.4965 cents per Mcf was executed after September 28, 1960, the date of its issuance of its Statement of General Policy. The Commision then accompanied its *Skelly* decision with the fifth amendment to the policy statement fixing a new ceiling in Texas Railroad Commission District 4 at 16 cents per Mcf. The instant contract under consideration was executed prior to September 28, 1960, a period for which the Commission believes 15 cents per Mcf was the appropriate "in line" price.

the Commission's summary of the evidence presented by Texaco in *Skelly* will serve as the summary of Texaco's evidence presented here. (See particularly Opinion No. 362, pp. 410 through 412).

It may also be observed that the Staff's evidence relating to "in line" price in the *Skelly* case for Railroad Commission District 4 was offered by the same Staff witness as appeared in *Skelly*. It is noted that there are no material differences in the Staff's exhibit or presentation in this case. (Exh. 48) from that offered in *Skelly*, except for an approximately two-month difference in the cutoff dates of the exhibits.

The examiner adopts and, indeed, is bound by the Commission's opinion in *Skelly* and on the basis of the same facts and reasoning as was employed by the Commission in *Skelly* concludes that the appropriate "in line" price for gas sold by Texaco and Seaboard for their proposed sale here in Texas Railroad Commission District No. 4 is 15 cents per Mcf. Of course, in Skelly, Texaco's contract was dated December 1, 1960, whereas in this case its contract was dated July 1, 1960. In these circumstances, the certificate which will be issued to Texaco and Seaboard will be conditioned at a 15-cent per Mcf initial price level.

As an addendum to the discussion of "in line" price for Texaco in this proceeding it may be observed that Texaco, Inc. has pending before an examiner of this Commission for initial decision a consolidated rate proceeding under Section 4(e) of the Act concerning the lawfulness of some 55 rate increase applications.[8]

During the course of its Section 4(e) proceeding, Texaco presented eight cost and service studies purporting to show the unit cost for gas sold in interstate commerce in 1956. Its unit costs were as follows:

Exh. 77, 42.33 cents per Mcf. Exh. 78, 40.84 cents per Mcf.
Exh. 79, 52.14 cents per Mcf. Exh. 80, 43.94 cents per Mcf.
Exh. 81, 42.41 cents per Mcf. Exh. 82, 53.71 cents per Mcf.
Exh. 95, 38.5 cents per Mcf. Exh. 96, 33.63 cents per Mcf.[9]

In addition, Texaco filed a reply brief in the same rate proceeding which contained appendices regarding its jurisdictional cost of service. Appendix A, Schedule 1 of Texaco's reply brief contains a summary of its jurisdictional cost of service, including return of 11 percent. The latter was prepared in accordance with the allocation principles approved by the Commission in the *Phillips* case. (24 FPC 537). This appendix shows that Texaco's jurisdictional cost of service on this basis is 14.160 cents per Mcf companywide.

Texaco, itself, in this proceeding conceded that the current and future revenue requirements alleged to be necessary in Texas Railroad Commission District No. 4 were somewhat less than those which it alleged to be required nationwide.

The undersigned expresses no opinion regarding Texaco's rate proceeding. However, these comments indicate that on a cost of service basis under Commission recognized principles a certificate conditioned at a public convenience and necessity initial price of 15 cents per Mcf here would not be unfair to the applicant. At the very least, these facts cast a very considerable cloud on Texaco's claims regarding its revenue requirements.

One of the matters which was not discussed in *Skelly* but which was raised during the course of this proceeding was the competency of the evidence intro-

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[8] *Texaco, Inc.*, Docket No. G–8969, *et al.*

[9] The Commission in considering the public convenience and necessity initial rate level has not hesitated to refer to prior rate hearings. [*See El Paso Natural Gas Co.*, 23 FPC 369 (1960).] It is also realized that the test year employed in Docket G–8969 *et al.* was 1956 while the contract under consideration here was executed in 1960. The quoted figures were obtained from the Staff brief in Texaco Inc., Docket No. G–8969.

duced by Texaco. Texaco's evidence, particularly reflected in Exhibit 44, regarding the national replacement cost of natural gas was dependent in major part upon the following source materials:

(1) "Exhibit 50LC" from the "Omnibus Case." *Champlin Oil and Refining Company, et al.*, Docket No. G–9277, *et al.* (Tr. 973).

(2) "Joint Association Survey" sponsored by the American Petroleum Institute, Independent Petroleum Association of America and the Mid-Continent Oil & Gas Association. (Exh. 44, Sch. 5, 7).

(3) "World Oil Magazine" (Tr. 975).

(4) "Petroleum Industry 1959" published by the Chase Manhattan Bank and is a study of 32 producing companies (Tr. 977).

(5) "Oil and Gas Journal" (Exh., Sch. 5)." [10]

Both UGI and the Staff have pointed out that the data derived from these five sources was based on confidential information which was not made available to the interveners and that such raw data was not only not available to the public but was not even available to Texaco. Further, the persons who compiled the source material upon which Texaco's witness relied were unknown, were not offered as witnesses and meaningful cross-examination of the validity of the data could not possibly be conducted.

The Commission held in *Gulf Oil Corporation, et al.*, Docket G–9520 that parties to proceedings of the instant character are entitled to enquire concerning the validity of the raw data forming the foundation of exhibits offered in evidence. It held that "withholding of such data under a confidential stamp raises serious due process questions which should not be present in an administrative proceeding based upon public records." See also *Powhattan Mining Co.* v. *Ickes*, 118 F. 2d 106 (6th Cir., 1941).

Here while there was no attempt to withhold evidence, the situation was even worse because there was no way of finding out whether the evidence being relied upon by Texaco was valid or not, or who compiled it, or what judgment values were involved or in what manner they were reached.

It is inappropriate for parties to employ as basic data material with regard to which the witness who has sponsored and prepared the exhibit has no personal knowledge and by this device to frustrate and make meaningless any cross-examination of the evidence offered to support a particular rate. Accordingly, Texaco's evidence is not only not germane, and not material, it is also incompetent, and should be excluded for that reason.

Humble's presentation of evidence involved a somewhat different approach from that employed by Texaco and Seaboard. In major part it depended upon so-called "trend" evidence. In substance this evidence purported to analyze the trends in demand and production versus trends in additional new supplies. Humble's principal witness, Maxwell Schantz, a consulting economist and vice president of Foster Associates, Inc. of Washington, D.C., sponsored an exhibit which was an economic study and was marked for identification as Exhibit No. 47.[11] This exhibit was labeled "Supply, Cost and Profit Trends Related to Initial Prices of Gas Supplies in Texas Railroad Districts 3 and 4." It consisted of 18 charts and 28 related schedules tabulating data alleged to be pertinent to determining the public convenience and necessity initial price for Humble's sale proposed to be made here. The sources relied upon by the witness as "backup" to support his conclusions are essentially of the same character as

[10] The quotation is taken from the Staff's Brief, page 11.

[11] This exhibit was offered in evidence but decision on whether it should be received was deferred under the same circumstances and for the same reasons as were applicable to Texaco's exhibits described hereinabove.

those relied upon by Texaco's witnesses and the same considerations which rendered Texaco's exhibits incompetent are applicable to this exhibit. In addition, this exhibit is not germane or material on the basis of the reasoning outlined by the Commission in its *Skelly* Opinion (*supra*). The exhibit will not be received in evidence and is excluded. Humble's evidence and its theory of the case is discussed in important part in three comparatively short paragraphs of its initial brief as follows:

> The study was designed to present testimony and factual data on the supply, demand, cost, revenue, and profit trends that relate to prices of natural gas in Texas Railroad Commission Districts 3 and 4 and especially to the initial base prices for the proposed sales to Natural from the Sugar Valley Field in Texas Railroad Commission District No. 3 and from five fields in Railroad Commission District No. 4, all of which are involved in this proceeding (Tr. 1047–1048). *Mr. Schantz emphasized that the test was to ascertain whether the proposed initial contract prices are consistent with the industry economic, financial, and cost trends which underlie market price behavior.*
>
> *An initial price in a certificate proceeding should be tested by industry economic and cost evidence to determine if the price is needed to encourage exploration for and development of adequate gas supplies (Tr. 1048). Considering one of the principal CATCO criteria, he emphasized that the initial contract price for a new sale of gas, even though it may be higher than past prices for comparable supplies, is not "out of line" when the price increase is consistent with the increases in cost of replacing the supplies of gas and with producer revenue requirements (Tr. 1048).*
>
> The extent of the geographic area for which industry trends on supply, demand, cost and revenue should be considered depends upon the purpose of the analysis and upon the availability of information. The first consideration in selecting geographic areas is to recognize that these trends have an industry-wide effect on market price. Thus analyses were made for the entire United States. Second, it must be realized that buyers can acquire supplies throughout the entire producing area of the Southwest, which must be considered as a single market. Therefore, analyses are made of the seven southwest producing states of Arkansas, Kansas, Louisiana, Mississippi, New Mexico, Oklahoma, and Texas. Finally, since the gas supplies involved in this proceeding are located in Texas Railroad Commission Districts 3 and 4, it is of interest to study the comparative supply-demand and supply-cost behavior for the State of Texas alone. [Italics supplied.]

It was the contention of Humble that producers were caught in a profit squeeze and that the profitablity of the industry "has declined to levels typically prevailing for pipelines and distributors, but wholly inadequate to attract capital to assure adequate new supplies." The principal witness for Humble gave testimony as to the "trend of demand in the past and what it is likely to be in the future." In substance, the witness expressed alarm at the inadequacy of new supplies in relation to demand. He also considered as material matter for initial price determination in this proceeding the amount of new discoveries needed to meet a "4.7 percent annual growth in demand." Included in the matters as to which he gave evidence were (1) the decline in the productivity of drilling, (2) the increasing cost per foot drilled, (3) the combined effort of declining productivity and increasing drilling cost on the cost of new supply, and (4) the inadequacy of revenues to induce the necessary drilling effort. These considerations were reflected in various cost and revenue trends appearing in Chart 18 of the witness' exhibit.

The exhibit is in part an analysis of current prices by their relationship to prior prices. In this connecton, the following statement appears in Humble's initial brief:

> In Texas Railroad Commission District No. 3, Humble's initial base price of 20¢ in 1960 is *27 per cent* higher than the average highest initial base price of 15.8 cents in 1953–55. A similar comparison for Texas Railroad Commission District No. 4 shows an increase of 34.1 per cent. These compare with increases in unit costs of drilling for hydrocarbons of *54* per cent for the United States and *43* per cent for the seven Southwest states and for Texas. Increases in the unit cost of drilling for gas were *30* per cent for the United States, *33* per cent for the seven Southwest states, and *35* per cent for Texas.[13]

There is no evidence in the record relating directly to Humble's cost of service such as would normally be presented in a rate case, and no such evidence is either required or appropriate in a certificate proceeding.

Humble's direct evidence was not directed to establishing what the "in line" price was on the basis of comparing its proposed contract price with prices received during the year in which it entered into its contract with the pipeline or even in the recent past by other producers selling gas in Texas Railroad Commission District No. 3. The past prices instead were to be used as a basis for leaping to a higher plateau of prices alleged to be justified in order to meet additional costs to supply future demand.

The problem which must be resolved is whether evidence of the character presented by Humble is material and relevant to the determination whether a price condition should be imposed, and if so at what level.

All the applicants in an earlier phase of these proceedings presented evidence of arm's-length bargaining. No claim of collusion was made by the Staff or the intervenors between the buyer and the sellers and there is no evidence in contradiction of the claims that the contract was arrived at as the result of arm's-length bargaining. However, as the Supreme Court has pointed out, even if a particular price were agreed to as a result of arm's-length bargaining such fact would not be determinative of the initial price issue in a Section 7(c) proceeding.

For the reasons expressed by the Commission in its *Skelly* Opinion No. 362, the evidence presented by Humble is no more material or germane than was the evidence presented by Texaco. Further, the evidence presented by Humble in its major exhibit suffered from the same infirmities insofar as sources utilized were concerned as was the evidence employed by Texaco in the formulation of the latter's exhibits.

The Staff in its brief (p. 25) pointed out with regard to Humble that "Aside from data published by the U.S. Government and by the American Gas Association, the witness draws liberally upon the following non-governmental materials for the derivation of his trends:

a) The *Oil and Gas Journal* (Exh. 47, pp. 13, 43)

b) Selected industry exhibits, some which have been included and some which have not been included in proceedings before the Commission. Those which are lodged with the Commission have an unknown evidentiary value (Exh. 47, p. 15, Note for Col. (c); Tr. 1502).[14]

c) *Capital Investment by the World Petroleum Industry* published by the Chase Manhattan Bank (Exh. 47, p. 16).

d) *World Oil* magazine (Exh. 47, pp. 23, 24, 29, 30)

e) Independent Petroleum Association of America, Cost Study Committee, *October 1959 Report on Cost Study* (Exh. 47, pp. 32 & 45)." [footnote excluded]

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[13] *See Humble's* initial brief, p. 29.

For the reasons expressed hereinabove in regard to Texaco in the *Skelly* decision the exhibit sponsored by Humble's witness Schantz was not germane, not material and not competent and should and will be excluded from evidence.

Since *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591 (1944) "trended original cost" evidence has been given no weight.[13]

In Docket No. G–9278, *Alfred C. Glassell, Jr., et al.*, the Commission stated:

> In determining the rate base of natural gas companies in the administration of the Natural Gas Act, we have consistently refused to give weight to evidence of reproduction cost, *price trends* or current market value. These determinations have so frequently been made and upheld by the courts that we believe it unnecessary to review again the underlying considerations for this administrative judgment. [Order issued June 1, 1961, 25 FPC 1071; Italics supplied.]

There is no reason why "trend evidence" should be given greater weight in a Section 7 proceeding than in a proceeding under Sections 4 or 5.

In connection with the claims of Humble and Texaco, it should be kept in mind that the instant proceeding is not an area rate proceeding, or one in which it would be appropriate to make determinations of the overall need for revenue for all the gas sold by the entire gas industry in the United States as a whole, or even to make determinations of the revenue requirements of all the natural gas producing companies doing business in the entire Texas Gulf Coast.

Evidence of this character has no relationship to "hold the line" prices or to "in lie" prices to which the Supreme Court had reference in CATCO. It is beyond the scope of any individual Section 7(c) proceeding. Issues such as these if pursued to their logical conclusion in individual 7(c) cases such as this one, for example, would result in an attenuation of such certificate cases to lengths far in excess of that which would be required in determining the just and reasonable rate in a case tried under the traditional rate base method and far in excess of that which is being taken in the Permian Basin area rate case, the terminal date of which is not known although it has been in hearing for more than a year and a half.

The Supreme Court empahisized that "the overriding intent of the Congress [was] to give full protective coverage to the consumer . . . ." *Atlantic Refining Co., et al.* v. *Public Service Commission, et al.*, 360 U.S. 378, 389, and the Court admonished the Commission in CATCO to "hold the line", and the Supreme Court's opinion must be given the greatest weight.

The Supreme Court, moreover, pointed out that private contract (or unilateral action in the absence of contract) rather than any provision of the Natural Gas Act was the source of the power of natural gas companies to file increased rates.[14] This power is inherent in the framework of the Act and is particularly pertinent to a case like the present one where the initial contract price agreed upon by the sellers and the buyer is the focus of the dispute and where the contract provides for increases in the rate level at specified periods of time. In this connection the Supreme Court pointed out in CATCO that:

> Section 7(e) vests in the Commission control over the conditions under which gas may be initially dedicated to interstate use. Moreover, once so dedicated there can be no withdrawal of that supply from continued interstate movement without Commission approval. *The gas operator*, although to this extent a captive subject to the jurisdiction of the Commis-

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[13] *See Federal Power Commission, et al.* v. *Hope Natural Gas Pipe Line Co.*, 320 U.S., particularly pp. 596 and 597.

[14] *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332; see also *United Gas Pipe Line Co.* v. *Memphis Light, Gas and Water Division, et al.*, 358 U.S. 103, 113.

sion, *is not without remedy to protect himself. He may, unless otherwise bound by contract, United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956), *file new rate schedules with the Commission. This rate becomes effective upon its filing, subject to the 5-month suspension provision of Section 4 and the posting of a bond, where required.* This not only gives the natural gas company opportunity to increase its rates where justified but likewise guarantees that the consumer may recover refunds for moneys paid under excessive increases.

* * * * * * *

In granting such conditional certificates, the Commission does not determine initial prices nor does it overturn those agreed upon by the parties. Rather, it so conditions the certificate that the consuming public may be protected while the justness and reasonableness of the price fixed by the parties is being determined under other sections of the Act. Section 7 procedures in such situations thus act to hold the line awaiting adjudication of a just and reasonable rate. Thus the purpose of the Congress "to create a comprehensive and effective regulatory scheme," *Panhandle Eastern Pipe Line Co.* v. *Public Service Comm'n of Indiana*, 332 U.S. 507, 520 (1947), is given full recognition. *And § 7 is given only that scope necessary for "a single statutory scheme under which all rates are established initially by the natural gas companies, by contract or otherwise, and all rates are subject to being modified by the Commission . . . ." United Gas Pipe Line Co.* v. *Mobile Gas Service Corp., supra*, at 341. On the other hand, if unconditional certificates are issued where the rate is not clearly shown to be required by the public convenience and necessity, relief is limited to § 5 proceedings, and, as we have indicated, full protection of the public interest is not afforded. [Italics supplied]

It is clear from the above quotation that the Commission's power to suspend rates from going into effect is limited under the Act and that within a comparatively short time if the producing companies choose to make Section 4(e) filings, the high rates provided for by the contract will go into effect subject to refund. In practical terms insofar as this case is concerned it means that the "in line" price can be held only for the period of time between the date of the order conditioning the price in a Section 7 certificate case at the "in line" level to the end of the suspension period following a Section 4(e) filing if the latter is made.

In view of the claims of Humble that in order to attain adequate production a 20-cent price is called for in Texas Railroad Commission District No. 3, the following comment of the Supreme Court in *Federal Power Commission, et al.* v. *Hope Natural Gas Co.*, 320 U.S. 591, at page 615, is particularly pertinent.

It is suggested that the Commission has failed to perform its duty under the Act in that it has not allowed a return for gas production that will be enough to induce private enterprise to perform completely and efficiently its functions for the public. The Commission, however, was not oblivious of those matters. It considered them. It allowed, for example, delay rentals and exploration and development costs in operating expenses. No serious attempt has been made here to show that they are inadequate. We certainly cannot say that they are, unless we are to substitute our opinions for the expert judgment of the administrators to whom Congress entrusted the decision. *Moreover, if in light of experience they turn out to be inadequate for development of new sources of supply, the doors of*

the Commission are open for increased allowances. This is not an order for all time. The Act contains machinery for obtaining rate adjustments. § 4. [Italics supplied]

In coming to a reasoned conclusion as to what the "in line" price really is,[18] it is necessary to exclude as having little or no relevance outstanding and unreversed Commission certificate orders containing price conditions where the determinations were reached on bases which the Courts of Appeals in decisions issued subsequent to the issuance of such orders have considered to be erroneous. Prices in outstanding certificate cases coming within the latter category are considered to be "suspect" and should not be employed as guidelines in coming to a conclusion as to the appropriate public convenience and necessity initial price. Nor can prices in Section 7 certificate orders which are the subject of Commission or judicial review be employed as guidelines in the determination of "in line" prices. It is also a source of some doubt that prices in certificate orders issued in the shortened procedure cases, where there was no issue as to price raised, have the same weight for evidentiary purposes in regard to the "in line" level as cases where the price issue was contested. This is particularly so where the price in the shortened procedure case was higher than the prices generally prevailing in the area. Further, the highest price in an area is not necessarily the "in line" price. It is suggested that a more satisfactory and sounder criterion than the latter price can be found by considering average price reflected by all the contracts in the area under consideration at whatever the past specific prices happen to be, based on the total volumes of gas being sold under such contracts. In determining whether the proposed prices in a Section 7 proceeding are "in line", consideration should also be given to the substantiality of the volumes involved in a specific Section 7(c) proceeding as compared to the substantiality of the total volumes sold at particular prices in the past in the area being considered.

In the *Skelly* opinion (*supra*), some considerations of this general character were advanced by the Commission. It is correct to say that the 15-cent price finally decided upon by the Commission in *Skelly* did not represent the weighted average of prices for Railroad Commission District No. 4 for the years 1958, 1959, and 1960, the contract years under consideration. The weighted average of the larger volume contracts given specific attention in *Skelly* would appear to be approximately 14.8 cents for such years. However, the Commission decided to fix the level at 15 cents per Mcf and, apparently, the latter price was a "rounded out" figure when considered in relation to the weighted average price for the three years to which particular attention was directed in *Skelly*. A similar approach will be taken in regard to Humble's sale in Texas Railroad Commission District No. 3 wherein the contract was executed prior to the issuance of the Commission's first policy statement. In this connection, it should be observed that the material which must be considered as the basis for arriving at a determination of where the "in line" price really is does not permit such line to be drawn with Euclidean exactness. For example, it appears that in *Skelly*, as in this case, there were differences in the terms of the various contracts contained in the Staff price exhibit. The Staff price exhibit relied upon by the Commission in *Skelly* in reaching its conclusions included contracts containing differences, in terms, including differences as to whether the delivery was at the wellhead or at a central point in the field,

[18] *See U.G.I.* v. *F.P.C.*, 283 F. 2d 817, 824–5, *cert.* den. 365 U.S. 879, 881, and *P.S.C.* v. *F.P.C.*, 287 F. 2d 146, 149 fn. 3, *cert.* den. 365 U.S. 880, 882, in particular. *See also P.S.C.* v. *F.P.C.*, 287 F. 2d 143; *U.G.I.* v. *F.P.C.*, 290 F. 2d 133, *cert.* den. 368 U.S. 823; *ibid*, 290 F. 2d 147, *cert.* den. 366 U.S. 965, and *ibid*, 287 F. 2d 159.

differences in the dehydration clauses and various other differences which might be considered either a fringe benefit to the seller or to the purchaser of the gas. These fringe differences generally result in cost variances, either to the purchaser or the seller, depending upon who will incur the expense related to the benefit.

The Commission has pointed out that it would not be appropriate in a Section 7 case to determine the "in line" price by enquiry into the costs of producing the gas being sold in any one particular field. It would appear to follow that an enquiry into the variances which might affect the "in line" price ought not to be attempted by evaluation on a cost basis of the fringe benefits as between the contracts in a particular area. The expense involved in these fringe benefits generally is not large by comparison to the total costs which the producer must undergo to produce, develop, and sell pipeline quality gas. In the absence of cost evidence, which the Commission has held to be inappropriate in Section 7 cases, the specific and usually minor costs related to the fringe benefits cannot be made the basis for changes in what would otherwise be the "in line" price.

In the Section 7 certificate cases, it is quite customary for applicants on cross-examination of the Staff witness sponsoring exhibits similar to Exhibit 48 to attempt comparison of one specific contract with another specific contract listed in the exhibit, in order to show that the fringe benefits are different and that no comparison between the prices shown on the Staff's standard price exhibit and the price sought by the applicant is really meaningful. Usually, differences of a comparatively minor character can be shown between the contract under consideration and some other contracts in the price exhibit, and these differences usually relate to what has been referred to here as the fringe benefits. Such differences involving as they do minor individual variances do not reflect an appropriate basis for holding that, on the whole, the contracts are not reasonably comparable.

It should also be observed that the experience of the Commission in reviewing prices in the certificate cases is that once a higher price plateau is reached for an area as a result of a large volume sale or for any other reason, subsequent sales even though not as large in amount bring unit prices in the latter cases roughly equivalent to the higher unit prices reached in the last high volume sales and thus serve to spiral prices in the area. Accordingly, while the few large volume sales which have resulted in a substantially higher unit price for the gas are entitled to be considered in the judgment to be made as to where the "in line" price should be drawn, the existence of the new and higher prices for a few such large volume sales should not be permitted to blur or erase completely the greater relative importance of the total price experience of the industry for the usually much greater volumes being sold in interstate commerce from a specific area at lower prices.

Further, there is nothing in the Commission's experience to indicate that the cost of an Mcf of gas to a producer selling a large volume of gas is more than the cost of an Mcf of gas to a producer selling a smaller quantity of gas. In fact, it may be less or it may be more. Unlike the certificate cases, in the rate cases, whether tried on the traditional rate base approach or not, the cost of producing gas is an important factor. In these circumstances, it would seem extraordinary to price the "substantial volume" sale at a high price per Mcf for Section 7 purposes and then later following a possible Section 4(e) filing to price the same "substantial volume" of gas at a lower price because the unit cost of producing it is less than the cost of producing the gas in the small volume sale, if the latter should turn out to be the case.

It should be kept in mind that in the case of almost any new sale even of a substantial quantity of gas, the amount involved will usually be a comparatively

small percentage of the total amount of gas being sold in a large area. This is the situation here. To permit the price for a proposed new sale of gas, even though of a substantial amount in an absolute sense, but nevertheless comparatively small in relation to all the gas in the area moving in interstate commerce, to be the sole determinant for comparison purposes would, in effect, be permitting the "tail to wag the dog" of rate regulation. In substance, permitting the small number of very large sales to be the sole determinant of prices for the area involved would, in effect, constitute the small number of large or substantial volume sales as the beginning point for spiraling prices of gas for all future sales made thereafter.

In connection with the matter of the substantiality of the volumes at issue in this proceeding, it may be noted that the joint Texaco-Seaboard contract provides for volumes of approximately 545,000 Mcf per month for Seaboard and approximately 654,100 Mcf per month for Texaco, the joint contract calling for deliveries of approximately 1,199,600 Mcf per month. On the other hand, the total amount involved in Humble's contract is approximately 248,000 Mcf per month. Texaco's and Seaboard's gas is to be delivered at four points and Humble's gas is to be delivered at one point. The volumes to be delivered under the joint Texaco-Seaboard contract are almost five times the amount to be delivered under Humble's contract. On the basis of the substantiality of the volumes involved in the contracts being considered, there would appear to be no good basis for awarding Humble more for an Mcf of its gas than Texaco should receive for its gas.

There is attached to this decision and made an integral part thereof an Appendix marked "Appendix A", covering sales made in Texas Railroad Commission District No. 3 as reflected in Staff Exhibit 48. Staff Exhibit 48 covers the period from January 1, 1955 through February 10, 1961.

Exhibit 48 does not contain any information with regard to the Commission's order issued on February 9, 1962, in *Socony Mobil Oil, Inc.*, Docket No. G–13780, 27 FPC 347.

The Commission in this order reduced the producer's initial price in Texas Railroad Commission District 3 to 16 cents per Mcf, despite its outstanding policy statement fixing ceiling prices in District 3 at 18 cents.

It should be noted that while *Socony Mobil* was decided after CATCO, the certificate order relied upon in the Commission's order in *Socony Mobil* as affording precedential authority for a 16-cent "in line" level was a pre-CATCO determination relative to a purchase made by Coastal Transmission Corporation.[16] In certificate cases decided "prior to CATCO a producer's rate was virtually presumed reasonable unless the FPC Staff or an intervenor could sustain the burden of proof to the contrary."[17] Accordingly, the determination relied on in *Socony Mobil* was based on principles which the courts thereafter have held to be invalid.

A typical example of the Commission's pre-CATCO opinions on conditioning prices in certificate proceedings is contained in the *Hope Natural Gas Company* case decided in 1958. This was a case where the proposed price was 27 cents per Mcf, *i.e.*, 7.8 cents higher than the prevailing rate. The Commission stated in its decision that:

> This case poses but one question, namely, "What evidence of prices or rates must an independent producer applicant introduce in order to sustain

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[16] In this case the Commission relied in important part on "certain 1956 contracts which covered part of Coastal Transmission Corporation's original gas supply and were discussed in Staff's motion.

[17] Producer Rate Regulation in Natural Gas Certification Proceedings: CATCO in Context by Nicholas Johnson, 62 Columbia Law Review, 773, 805.

a finding that the public convenience and necessity requires a sale of the gas?" . . . We are of the view that if the applicant proves there is a market for the gas at the proposed price and that the project is economically feasible at the proposed price (both market and economic feasibility being factors which we consider in determining public convenience and necessity) that it has sustained its burden of going forward with the evidence, and in the absence of evidence showing that the proposed price or rate adversely affect the public convenience and necessity, the applicant has made out a prima facie case, and a certificate should issue to it.[18]

In connection with these comments, it may be observed that the case relied upon in *Socony Mobil* to support a 16-cent price in Texas Railroad Commission District No. 3 was a case decided upon pre-CATCO principles and such principles are inconsistent with those which the Courts of Appeal and the Supreme Court have since held to be appropriate in conditioning prices in certificate cases. Since October 1960 when *U.G.I.* v. *F.P.C.*, 283 F. 2d 817 (1960) was decided, the Courts of Appeal have been practically unanimous in remanding cases to the Commission on the ground that proposed rates could not be approved by comparison with equally high or higher rates approved under pre-CATCO standards. In these circumstances the examiner does not consider that *Socony Mobil* should be accorded precedential value.

The effect of the Commission's position as exemplified by its *Hope* opinion quoted above was improperly to relieve the producers from their burden of establishing that a certificate at the prices sought would serve public convenience and necessity and to place upon the Staff and the interveners the burden of establishing a negative, namely that the issuance of a certificate at the price levels sought would not serve public convenience and necessity. The adoption of this standard which is directly opposite to the standard held to be valid by the Supreme Court in CATCO had the effect of giving:

> * * * notice to all producers that they need exercise little restraint in exacting prices, and even less effort in justifying them. If intervenors or the Commission Staff thought a price too high, it was they, not the producer, that had the burden of proof—a burden so severe that in no case was it sustained.
>
> The Hope standard was reiterated and expanded in the Seaboard case [*Seaboard Oil Co.*, 19 FPC 416 (1958)] which, like Hope, stimulated a lengthy dissent from Commissioner Connole. Seaboard had contracted at 19.5 cents per M.c.f.; the FPC Staff proposed an 18-cent condition. As the Commission found "a complete lack of evidence in this case to support such a [condition] and as the burden of proof rested on the Staff, the certificate was awarded without it." The Commission explained the reasons for its new attitude toward rates: "[W]e think it generally true that to-day, diverse factors tend increasingly to accentuate the importance of the other elements of public convenience and necessity in relation to that of price, and lessen the justification for attempting to determine matters of price outside the specific context of the rate proceedings for which the Act has made specific provision." This new philosophy of rate regulation was soon to have its effect on consumer prices. [Footnotes omitted][19]

As has been pointed out, the new philosophy of rate regulation was subsequently held invalid by the Supreme Court in CATCO which held that the burden of proof that the prices sought would serve public convenience and necessity was on the applicant.

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[18] *Hope Natural Gas Co.*, 19 FPC 405 (1958).

[19] 62 Columbia Law Review 778, pp. 785, 786 (footnotes omitted).

The undoubted impact of the prior Commission's policy was to bring about an increase in the weighted average of gas prices for the United States which was higher than would otherwise have been reached. Therefore the use of a weighted average price covering any substantial period of time from one year up to the period covered by Staff comparative price Exhibit 48 for the purpose of drawing the "in line" price will reflect an advantage to the producers and a corresponding disadvantage to the consumers in the sense that the weighted average price which would be arrived at by the use of prices contained in the exhibit, determined as they were under the Commission's heretofore invalid standards, would be higher than that which would have been reached had appropriate legal standards been employed. However, it is not feasible or, indeed possible, to go back to re-evaluate all the past certificate decisions to arrive at what the prices in the certificates would have been had valid legal standards been employed. Accordingly, while some undue advantage will be reaped by the producers through using a weighted average based on prices contained in Staff Exhibit 48, this exhibit and the testimony in support thereof contains the only available evidence in the record of a material and competent character which may reasonably be employed to determine the "in line" price. Therefore, despite the built-in advantage to the producers inherent in the exhibit, the exigencies of the evidentiary situation stemming as they do from the historical background of past Commission action in the Section 7(c) certificate cases appears to require that the "in line" price be held close to the weighted average of the prices reflected in Exhibit 48 if the "hold the line" principles expressed in CATCO are to be given such force and meaning as is reasonably attainable at this time. This conclusion is based in important part on the fact that Exhibit 48 constitutes the only cogent evidence in the proceeding relating to the "in line" price and on the further fact that the "in line" price cannot reasonably be drawn with mathematical exactness.

Although Exhibit 48 suffers from the defects to which we have referred, it is a carefully prepared document reflecting accurately the record of the upper level prices for "jurisdictional gas" in Texas Railroad Commission Districts 3 and 4 as they have been authorized by the Federal Power Commission. Moreover, the testimony of the Staff witness who sponsored the exhibit was careful, intelligent, and informed.[20]

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[20] It may be pointed out that in 1955, the Commission, in *Cities Service Gas Co.*, 14 FPC 134, conditioned an initial price from 12 cents to 10 cents and its action was affirmed in 1956 by the Third Circuit in *Signal Oil & Gas Co.* v. *F.P.C.*, 238 F. 2d 771. This case is one of only a very few cases where the Commission conditioned an initial price prior to CATCO.

In general, the majority of the former members of the Commission believed that under the Act they could not or should not condition prices in certificates to be issued to independent producers. In this connection, it was noted (at page 783) in Professor Johnson's article in the Columbia Law Review referred to hereinabove that following the Supreme Court's decision in the first *Phillips* case, "The Commission was as hopeful after 1954 that the new-found unwanted jurisdiction would vanish as it had once been fearful of its coming." (footnotes omitted). The author also footnoted the well-known September 1959 Fortune Magazine article on the former members of the Commission in which it was observed that, "Few speeders have been caught by cops who thought the speed limit was a lot of malarkey."

It may also be observed that since the second *Phillips* case was decided, every hearing examiner who has issued an initial decision in a combined Section 4(e) and 5(a) case has determined the rates of the independent producers generally under the traditional rate base method using, with one exception, *Phillips* allocation principles. In the examiners' initial decisions where Phillips' allocation principles were followed, the company-wide costs for an Mcf of natural gas were found to be 8.7 cents per Mcf for *Union Producing Company*, Docket No. G–18354; 11.4 cents per Mcf for *Tidewater Oil Co.*, Docket No. G–13310, and 12.2 cents per Mcf for *Amerada Petroleum Co.*, Docket No. G–18634. In the

Appendix A reflects for Texas Railroad Commission District No. 3 all the certificates authorized for the period from January 1, 1955 to and including February 10, 1961, which were permanent at the time that exhibit 48 was received in evidence, and all temporary certificates which have become permanent since that time. This Appendix shows estimated first month volumes for the period covered by the Staff Exhibit totaling 2,963,437 Mcf. However, the "challenged" or "suspect" certificates were excluded from the total volumes of 2,963,437 Mcf. Specifically, the contracts listed in attached Appendix A which were excluded as being in the "suspect" or "challenged" category are those listed on lines 2 through 13, inclusive, and lines 29 through 34, inclusive, as well as those on lines 37 through 39, inclusive, and those on lines 46 and 47. The revenues associated with the volumes of 2,963,437 Mcf amounted to $447,789. These figures reflect a weighted average price for the total period of 15.11 cents per Mcf.

Appendix A also shows for non-suspect contracts executed in 1960 total estimated first month volumes for permanent certificates amounting to 937,495 Mcf. The associated revenues for the latter volumes were $139,617. These figures reflect a weighted average price of 14.89 cents per Mcf for 1960 contracts.

The average estimated first month volumes of permanent certificates granted for 1960 contracts was 52,083 Mcf.[21] The average estimated first month volumes of permanent certificates granted for the entire period covered by Exhibit 48 was 51,990 Mcf. The estimated first month volumes proposed to be sold here by Humble are 248,000 Mcf.

There were a number of substantial volume sales in Texas Railroad Commission District No. 3 in 1959 and 1960.[22] In this connection, it is noted that on January 27 and 28, 1960, R. M. Finder and J. S. Michael entered into contracts with Valley Gas Transmission Company whereby the latter purchased natural gas, the contracts showing estimated first month volumes totalling 232,500 Mcf at 14 cents per Mcf.[23] This is the same volume which Valley Gas contracted to sell to Tennessee Gas for 16.16947 cents per Mcf, pursuant to an agreement dated February 7, 1960. The latter agreement supplemented an earlier agreement which Valley Gas had with Tennessee dated September 30, 1959. (See certificate application of Valley Gas and footnote 11 of Schedule 1 of Exhibit 48). The con-

examiner's initial decision in *Hunt Oil Company*, Docket No. G-9065, the only initial decision which employed allocation methods differing in material aspects from those used in *Phillips*, the company-wide cost of producing an Mcf of gas was found to be 17.3 cents per Mcf. In the latter case, the record before the examiner contained no evidence showing what the cost of gas would be if Phillips' allocation principles were used. It should also be observed that the Commission has issued no decision reviewing any of these hearing examiner decisions. In addition, as noted heretofore, Texaco's reply brief in Docket G-8969 *et al.* sets forth that its jurisdictional cost of service upon employment of *Phillips* allocation principles including return of 11 percent reflects a company-wide cost of producing gas of 14.160 cents per Mcf. Further, if Texaco's evidence adduced in the instant case to support the contract price were germane, material, or competent, and were credited, it would show that the cost of producing gas on the Texas Gulf coast is generally less for all producers than company-wide costs are generally.

In the absence of evidence to the contrary, there is no reason to believe that Humble's management is less efficient than that of the major oil companies whose rate cases were the subject of initial decisions by the Commission's examiners or that its cost of producing natural gas was higher than that of the companies mentioned hereinabove.

In addition to all of these considerations, it may be further observed that Staff Exhibit 48 excludes all certificate prices below 14 cents per Mcf in Texas Railroad Commission Districts 3 and 4, and thus the weighted average of the prices contained in this exhibit is higher than it would be if all the certificate prices for gas authorized by the Commission in Texas Railroad Commission District No. 3 were included in the exhibit.

[21] This figure represents the total volumes for 1960 divided by the number of contracts involved.

[22] See discussion of "substantial volume" sales in *Skelly* (*supra*).

[23] See Exhibit 48.

tract between Valley Gas and Tennessee was not in the category of a sale by a producer to a pipeline but was a sale by a pipeline to another pipeline, and the difference between 14 cents per Mcf and 16.16947 cents represented payment for Valley Gas' service in gathering and transporting the gas.

There were four other substantial volume sales in Texas Railroad Commission District 3 which should be noted. One of these sales amounting to 93,000 Mcf estimated first month volumes and was made on February 4, 1959, by Cities Service Petroleum Company to Texas Eastern Transmission Corporation at 14.6 cents per Mcf. Another sale was made on July 10, 1959, by Roy R. Gardner to Tennessee Gas Transmission Company and involved 270,000 Mcf estimated first month volumes at 16.16947 cents per Mcf. The next sale amounting to 120,000 Mcf estimated first month volumes was made on April 11, 1960, by the Estate of J. P. Petkas also to Tennessee at the same price. The next large volume sale was made on November 2, 1960, by Peltex Petroleum Company to Tennessee Gas and involved estimated first month volumes of 93,000 Mcf. The latter sale was after September 28, 1960, and therefore should not be included in prices prior to the issuance of the Commission's Policy Statement. It appears that if the average price of the Finder and Michael gas sale at 14 cents and the average of the producer sales made at 16.16947 is weighted by the volumes involved, the weighted average price for the high volume producer contracts involved in Texas Railroad Commission District 3 for 1959 and for the period up to September 28, 1960 is 15.26 cents per Mcf.

All of these substantial volume sales received permanent certification in non-contested "shortened procedure" proceedings where no issue was raised concerning the initial price and where there was no explanation in the Commission's orders concerning the reasons for certificating the applications at the initial prices authorized. The recitation of prices authorized in orders issued in "shortened procedure" cases for the purpose of establishing the "in line" price is not generally as satisfactory for judgment purposes as the citation of cases where the price issue has been the subject of a reasoned conclusion. The determination made in the "shortened procedure" cases are the equivalent of the determinations made in courts of law where the judgments were obtained by default. Their value for the purpose of establishing a precedent would appear to be limited.

On consideration of all the material and relevant facts and circumstances by which the "in line" prices for natural gas involved in these proceedings should be determined, including all the evidence adduced, the arguments of all counsel, and the briefs filed herein, the examiner concludes that there is no valid reason why Humble's proposed sales herein to Natural should be authorized at any higher price than Texaco's proposed sales, and accordingly the certificate to be issued to Humble will be conditioned to a public convenience and necessity initial price of 15 cents per Mcf.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of all the evidence adduced and the briefs and arguments of counsel, as well as upon the preceding portion of this decision, it is further found and concluded that:

(1) Texaco [24] and Humble are natural-gas companies within the meaning of the Natural Gas Act as independent producers of natural gas, as that term is defined

[24] Since Seaboard has now been merged into Texaco, it is not necessary to issue a separate order or certificate to cover the former company, and accordingly the certificate to be issued here to Texaco, Inc. will also cover the sale proposed by Seaboard.

in Section 154.91 (a) of the Commission's Regulations, engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(2) Texaco and Humble are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(3) The sale of natural gas as proposed by Texaco and Humble, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor are required by the public convenience and necessity and a certificate authorizing the same should issue to each of them upon the terms and conditions of the order herein, which terms and conditions are required by the public convenience and necessity.

(4) The public convenience and necessity requires that the initial prices charged by Texaco and Humble for the sales proposed in their certificate applications in this proceeding be not greater than 15 cents per Mcf at 14.65 psia.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission, that:

(A) A certificate of public convenience and necessity is hereby issued to Texaco and Humble for the sale of natural gas in interstate commerce for resale as proposed in the applications filed in Docket Nos. CI61–118, CI61–119 and CI61–157, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor upon the terms and conditions of this order.

(B) The certificates issued to Texaco and Humble are hereby conditioned to prohibit any total initial price, including all reimbursements and charges greater than 15 cents per Mcf at 14.65 psia from the date of the issuance of this order until such prices may be lawfully changed in the manner provided by the Natural Gas Act.

(C) The certificates of the producer applicants referred to above shall be conditioned so that the take-or-pay requirement in each contract is subject to the provisions of the Commission's final order in Docket R–199 as of the effective date of that order.

(D) The certificates issued herein are not transferable and shall be effective only so long as each of said applicants continues the acts and operations herein authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(E) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 of the Commission's Regulations under said Act requiring the filing of rate schedules for the service herein authorized and is without prejudice to any findings or orders which may have been or hereafter may be made by the Commission in any proceeding now pending or hereinafter instituted by or against the applicants. Further, the action taken in these proceedings shall not foreclose nor prejudice any further proceeding or objection relating to the operation of any price or related provisions in the gas contracts here involved.

SAMUEL BINDER,
Presiding Examiner.

APPENDIX A

PERMANENTLY CERTIFICATED SALES OF GAS PRODUCED IN TEXAS RAILROAD COMMISSION DISTRICT NO. 3 UNDER CONTRACTS EXECUTED BETWEEN 1955 AND FEB. 10, 1961, AT TOTAL INITIAL RATES OF 14.0 CENTS AND HIGHER

	Date and docket of permanent certificate (1)	Contract date (2)	Seller and buyer (3)	Rate schedule number and field (4)	Total initial price ¢/Mcf @14.65 psia (5)	Monthly billing statement estimated volume Mcf @14.65 (6)
1	7-20-56 G-10124	12-15-55	George R. Brown—Texas Eastern Transmission Corp.	3 Lochridge & S. Lochridge.	14.2	30,000
2	12-28-56 G-10078	6-21-56	Superior Oil Company—Coastal Transmission Corp.	87 Algoa	18.0	80,940
3	12-28-56 G-10079	6-21-56	....do	84 South Alvian	17.5	310,500
4	12-28-56 G-10209	11- 1-55	Shell Oil Company—Costal Transmission Corp.	195 Kain	17.5	170,500
5	12-28-56 G-10129	12-28-55	Gulf Oil Corporation—Coastal Transmission Corp.	159 Lochridge	17.5	78,750
6	12-28-56 G-10212	11- 1-55	Shell Oil Company—Costal Transmission Corp.	192 Lochridge	17.5	155,000
7	12-28-56 G-11010	7-23-56	Mrs. Mae Lusk—Coastal Transmission Corp.	1 Lochridge	17.5	30,000
8	12-28-56 G-11043	8-27-56	Clay Johnson, Jr.—Coastal Transmission Corp.	....do	17.5	12,250
9	12-28-56 G-11065	8-21-56	Christie, Mitchell & Mitchell Co.—Coastal Transmission Corp.	20 Palacios	17.5	157,500
10	12-28-56 G-11066	8-27-56	South Hutchins Producers, Inc.—Coastal Transmission Corp.	1 South Hutchins	17.5	14,120
11	12-28-56 G-11186	8-27-56	The Atlantic Refining Co.—Coastal Transmission Corp.	200 Palacios	17.5	12,900
12	12-28-56 G-11218	8-27-56	North Withers Producers Inc.—Coastal Transmission Corp.	1 North Withers	17.5	84,800
13	12-28-56 G-11262	7-23-56	Johnson & McCurdy—Coastal Transmission Corp.	1 Lochridge	17.5	18,750
14	4-22-57 G-10927	4- 1-56	J. S. Abercrombie Mineral Co., Inc.—Natural Gas P. L. Co. of America	1 Milton	15.0	52,500
15	4-22-57 G-10929	4- 1-56	H. G. Nelms—Natural Gas P. L. Co. of America	....do	15.0	3,750
16	4-22-57 G-10930	4- 1-56	Wheeler Nazro—Natural Gas P. L. Co. of America.	....do	15.0	3,750
17	4-22-57 G-11025	4- 1-56	J. M. Huber Corp.—Natural Gas P. L. Co. of America	23 Milton	15.0	7,500
18	9-10-57 G-12065	11- 1-56	Ada Oil Company—Natural Gas P. L. Co. of America	6 Liverpool	15.2	34,642
19	1-6-58 G-10515	5- 1-56	F. A. Callery, Inc.—Natural Gas P. L. Co. of America	12 Bailey's Prairie	15.0	150,000
20	3-7-58 G-11126	4- 1-56	Columbian Fuel Corp.—Natural Gas P. L. Co. of America.	28 Milton	15.0	7,500
21	4-17-58 G-13870	10-18-57	Cyprus Oil Company—United Hills Gas Pipeline Co.	3 North Indian Hills	15.18560	22,500
22	4-17-58 G-13943	10- 1-57	Socony Mobil Oil Co., Inc.—Hills United Gas Pipeline Co.	139 North Indian Hills	15.192	22,500
23	5-21-58 G-14145	10-15-57	Anderson & Cooke—Natural Gas P. L. Co. of America.	2 Menefee	15.0	56,000
24	6-2-58 G-14197	11- 1-57	NAFCO Oil & Gas Inc.—Natural Gas P. L. Co. of America.	13 Old Ocean	15.5	75,000
25	6-13-58 G-14367	7- 1-57	Claud B. Hamill—Natural Gas P. L. Co. of America.	8 Spanish Camp	15.0	60,000
26	7-24-58 G-8539	1-24-55	Sinclair Oil & Gas Co.—Natural Gas P. L. Co. of America.	50 Fairbanks	15.0	45,000
27	1-2-59 G-15308	5-29-58	Michel T. Halbouty—United Gas Pipeline Co.	7 Fostoria Wilcox	15.192	135,000
28	3-31-59 G-16386	8-25-58	Slick Oil Corp.—United Gas Pipeline Co.	10 Peden	15.0	45,000
29	5-22-59 G-15471	5-14-58	Phillips Petroleum Co.—Trunkline Gas Co.	317 Chocolate Bayou	20.0	775,000
30	5-22-59 G-15472	5-14-58	....do	318 Various	20.0	465,000
31	5-22-59 G-16147	7-14-58	Superior Oil Co.—Trunkline Gas Co.	88 Franks	20.0	1,953
32	5-22-59 G-16267	8-15-58	Tidewater Oil Co.—Trunkline Gas Co.	93 Chocolate Bayou.	20.0	176,700
33	5-22-59 G-16551	8-14-58	J.S. Michael—Trunkline Gas Co.	2 Alta Loma & Hitchcock.	20.0	14,922
34	5-22-59 G-16570	8-14-58	J. S. Michael Company—Trunkline Gas Co.	Not filed Alta Loma & Hitchcock.	20.0	Not filed

APPENDIX A—Continued

PERMANENTLY CERTIFICATED SALES OF GAS PRODUCED IN TEXAS RAILROAD COMMISSION DISTRICT NO. 3 UNDER CONTRACTS EXECUTED BETWEEN 1955 AND FEB. 10, 1961, AT TOTAL INITIAL RATES OF 14.0 CENTS AND HIGHER—Con.

	Date and docket of permanent certificate	Contract date	Seller and buyer	Rate schedule number and field	Total initial price ¢/Mcf @14.65 psia	Monthly billing statement estimated volume Mcf @14.65
	(1)	(2)	(3)	(4)	(5)	(6)
35	6-4-59 G-13548	2-21-57	C. B. Webster—Texas Eastern Transmission Corp.	4 Tidehaven	14.4	90,000
36	9-25-59 G-14140	9-1-57	Warren Petroleum Corp.—Natural Gas P. L. Co. of America.	47 Fairbanks	15.8	9,300
37	10-27-59 G-16975	7-9-58	John W. Mecom—Trunkline Gas Co.	8 Alta Loma & Hitchcock.	20.0	46,500
38	10-27-59 G-17044	8-22-58	Seadrift Pipeline Corp.—Trunkline Gas Co.	1 Hitchcock	20.0	10,075
39	10-27-59 G-17263	9-16-58	Union Oil Co. of Calif.—Trunkline Gas Co.	31 Acadia & Alta Loma.	20.0	25,500
40	12-2-59 G-15098	4-15-58	Robinson Oil & Gas Co. of Texas—Natural Gas P. L. Co. of America.	2 Menefee	15.0	60,000
41	12-22-59 G-13597	2-1-57	Greenbrier Oil Co.—Natural Gas P. L. Co. of America.	6 Bailey's Prairie	15.0	60,000
42	12-30-59 G-18906	10-5-57	H. L. Hawkins & H. L. Hawkins Jr.—Natural Gas P. L. Co. of America.	10 Menefee	15.0	15,500
43	5-3-60 G-14516	12-12-57	Oil Drilling Inc.—Texas Eastern Transmission Corp.	1 Tide Haven	14.4	34,000
44	5-3-60 G-18368	12-11-58	Salt Dome Production Co.—Texas Eastern Transmission Corp.	5 Garwood	14.6	3,000
45	5-31-60 G-19144	6-22-59	Gulf Oil Corp.—United Gas Pipeline Co.	172 Fostoria-Wilcox.	15.192	11,250
46	7-14-60 G-18648	6-21-56	H. L. Hunt—Coastal Transmission Corp.	26 South Alvin	17.5	10,396
47	9-20-60 G-16232	5-25-56	Union Producing Co.—Coastal Transmission Corp.	231 Kain	17.5	60,000
48	9-20-60 G-18443	4-8-59	Texas Gas Exploration Corp.—Trunkline Gas Co.	2 West Nona Mills.	15.0	30,000
49	9-20-60 G-18999	7-8-59	Woods Exploration Co.—United Gas Pipeline Co.	1 Hinkle	14.1792	45,000
50	9-20-60 G-19099	7-10-59	Roy R. Gardner—Tennessee Gas Transmission Co.	3 Bruce-Flo	16.16947	270,000
51	10-31-60 G-19961	9-21-59	Sinclair Oil & Gas Co.—United Gas Pipeline Co.	188 Springer	15.144	60,000
52	10-31-60 CI60-635	4-11-60	Estate of J. P. Petkas—Tennessee Gas Transmission Co.	1 Alligator Bayou	16.16947	120,000
53	12-21-60 G-18014	2-4-59	Cities Service Petroleum Co.—Texas Eastern Transmission Corp.	128 Old Waverly	14.6	93,000
54	1-12-61 G-13682	9-16-57	Hunt Oil Co.—Texas Eastern Transmission Corp.	35 South Nome	14.4	30,000
55	1-31-61 G-19618	9-30-59	Valley Gas Transmission Inc.—Tennessee Gas Transmission Corp.	1 Sejita	16.16947	232,500
56	3-10-61 CI60-111	1-22-60	Ancon Oil & Gas Inc.—Tennessee Gas Transmission Co.	1 Jones Creek	14.0	24,000
57	3-10-61 CI60-125	12-15-59	Dixon Management Corp.—Tennessee Gas Transmission Co.	14 Twin Basin	14.0	6,750
58	3-10-61 CI60-274	1-20-60	George R. Brown—Trunkline Gas Co.	6 South Lissie	15.0	62,000
59	3-10-61 CI60-310	7-8-59	Slick Oil Corporation—United Gas Pipeline Co.	16 Hinkle	14.1792	11,250
60	3-31-61 CI60-227	1-28-60	R. M. Finder d/b/a Texkan Oil Co.—Valley Gas Transmission, Inc.	9 Tide Haven	14.0	139,500
61	3-31-61 CI60-228	1-27-60	J. S. Michael—Valley Gas Transmission, Inc.	3 West Bay City	14.0	93,000
62	4-21-61 CI60-366	3-17-60	Cerro DelPasco Corp.—Tennessee Gas Transmission Corp.	1 North Chesterville.	15.0	18,000
63	4-21-61 CI60-386	7-8-59	Newman Brothers Drilling Co.—United Gas Pipeline Co.	5 Hinkle	14.1792	3,750
64	4-21-61 CI60-810	11-2-60	Pel Tex Petroleum Co.—Tennessee Gas Transmission Co.	1 Trull	16.16947	93,000
65	6-6-61 G-13225	7-12-57	Michel T. Halbouty—Texas Eastern Transmission.	6 South Garwood.	14.2	21,000
66	6-6-61 G-15877	7-28-58	Robert H. Merritt—Texas Eastern Transmission Corp.	1 Bernard Prarie	14.4	90,000

APPENDIX A—Continued

PERMANENTLY CERTIFICATED SALES OF GAS PRODUCED IN TEXAS RAILROAD COMMISSION DISTRICT NO. 3 UNDER CONTRACTS EXECUTED BETWEEN 1955 AND FEB 10, 1961, AT TOTAL INITIAL RATES OF 14.0 CENTS AND HIGHER—Con.

	Date and docket of permanent certificate (1)	Contract date (2)	Seller and buyer (3)	Rate schedule number and field (4)	Total initial price ¢/Mcf @14.65 psia (5)	Monthly billing statement estimated volume Mcf @14.65 (6)
67	6-6-61 CI60-37	9-16-59	Crescent Carbon Co.—Tennessee Gas Transmission Co.	1 Southwest Garwood.	14.5	43,500
68	6-6-61 CI60-472	3-15-60	The Pure Oil Co.—United Gas Pipeline Co.	51 Fostoria-Wilcox.	15.192	19,920
69	6-27-61 CI60-109	4-11-60	Olin Gas Transmission Corp.—Tennessee Gas Transmission Co.	F-8 Alligator-Bayou.	16.16947	77,500
70	6-27-61 CI60-467	3-29-60	Arthur L. Ginsburg, Trustee—Tennessee Gas Transmission Co.	1 Southeast Tomball.	14.5	15,500
71	6-27-61 CI61-494	9- 8-60	Appell Petroleum Corp.—Tennessee Gas Transmission Co.	2	14.0	30,000
72	6-27-61 CI61-617	10-10-60	R. M. Finder d/d/a Texkan Oil Co.—Valley Gas Transmission Inc.	14 Southwest Pleasant.	14.0	60,000
73	6-27-61 CI61-759	9-26-60	U.M. Harrison—Valley Gas Transmission Inc.	1 West Bay City.	14.0	60,000
74	8-7-61 CI61-237	5- 2-60	Sinclair Oil & Gas Co.—Trunkline Gas Co.	200 West Nona Mills.	15.0	16,200
75	8-7-61 CI61-241	7-13-60	Oil Reserves Corporation—Trunkline Gas Co.	1 Little Rock Creek.	15.0	15,000
76	8-7-61 CI61-535	9-30-60	Harold Billingsley, Trustee—Tennessee Gas Transmission Co.	2 Columbus	14.0	30,000
77	8-9-61 G-18805	4-15-59	Shell Oil Company — Coastal Transmission Corp.	209 East Bay	18.0	15,500
78	1-8-62 CI61-70	6-28-60	MPS Production Company—Tennessee Gas Transmission Co.	2 Sugar Valley	15.0	60,000
79	1-8-62 CI61-107	5- 2-60	The Atlantic Refining Co.—Trunkline Gas Company	218 West Nona Mills.	15.0	3,875
80	4-17-62 G-19596	10- 5-57	Rodger Milliken—Natural Gas Pipeline Co. of America	3 Menefee	15.0	40,000

OPINION NO. 384

SOUTH CAROLINA ELECTRIC & GAS COMPANY, DOCKET NO. E-6468

OPINION AND ORDER MODIFYING AND ADOPTING INITIAL DECISION OF PRESIDING EXAMINER DETERMINING ANNUAL CHARGES FOR BENEFITS FROM HEADWATER IMPROVEMENT

(Issued March 28, 1963)*

Syllabus

1. Purpose of Section 10(f) is to require beneficiary to contribute to annual charges of headwater improvement supplying such benefits. P. 625.
2. Commission *finds* Stevens Creek experienced energy gains from Clark Hill, but no dependable capacity gains or losses. P. 626.
3. *Rejecting* contention that assessing annual charges against hydroelectric plant constructed prior to enactment of Federal Power Act would be retrospective and violative of Due Process Clause, Commission *notes* 1910 permit expressly provided that Permittee pay annual charges. P. 627.

*Initial Decision appears on P. 631. Rehearing denied by order issued May 24, 1963; stay granted June 21, 1963; 29 FPC 1044 and 1247, respectively. Affirmed on November 9, 1964, in *South Carolina Electric & Gas Co.* v. *F.P.C.* (CA4 No. 9091).

4. Commission *rejects* Licensee's argument that under the Act cost of making determination should be apportioned between non-federal licensees which *receive* payment not those who must pay the charges—*states* such argument would deny Section 10(f) any meaning or effect in situations such as here. P. 627.
5. There should be no reduction in hydroelectric plant energy gains on account of evaporation losses from upstream reservoir. P. 627.
6. It is reasonable under Section 10(f) that there be no annual charges for headwater benefits until such time as any loss to downstream project from filling of upstream reservoir is exceeded by benefits from upstream facility. P. 628.
7. Company's claim for offsets against Stevens Creek based upon reregulation is rejected; Commission *holds* that Congress by Section 10(f) did not make United States liable for streamflow improvements benefits provided by others. PP. 628–629.
8. Commission *approves* "value of service method" of apportioning annual charges. P. 630.
9. Commission *determines* annual charges for benefits from headwater improvement in proceeding arising under Section 10(f) of the Federal Power Act. P. 631.

Harry A. Poth, Jr., Peyton G. Bowman, III and *Arthur M. Williams, Jr.*, for South Carolina Electric & Gas Company.

Curtis H. Bell; Edward Weinberg and *Charles W. Leavy*, for the Secretary of the Interior.

Joseph B. Hobbs and Robert L. Woods, for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, Charles R. Ross, and Harold C. Woodward.

MORGAN, *Commissioner:* This case arises on the Commission's order issued December 8, 1952, 11 FPC 1508, instituting an investigation under Section 10(f) of the Federal Power Act (Act), to determine whether the Stevens Creek hydroelectric project owned and operated by the South Carolina Electric & Gas Company (Company), and the dam and power canal of the City of Augusta, Georgia (City), on the Savannah River, are directly benefited by the upstream Clark Hill hydroelectric project, and if so, what equitable portion of the annual charges for interest, maintenance and depreciation on the Clark Hill project the Company and the City should pay the United States, which owns the Clark Hill project, on account of such benefits.

The Stevens Creek project, constructed in 1913 and 1914 on the Savannah River about 8.7 miles upstream from the City of Augusta, has a total installed capacity of 18,880 kilowatts and a gross power head of 29 feet. The Clark Hill project, which first provided stream flow regulation in 1950, is located about 13 miles upstream from the Stevens Creek project. It has a total installed capacity of 280,000 kilowatts and a gross power head of 136 feet. Headwater improvements such as Clark Hill may benefit downstream projects by, among other means, making available during time of low river flow, water stored at times of high flow, thus increasing the downstream project's energy production; and the purpose of Section 10(f) is to require the beneficiary to contribute to the annual charges of the headwater improvement supplying benefits.

During the investigation, the Commission's staff and the Company conferred frequently and attempted to resolve many of the issues. Eventually, the staff completed its revised Report dated December, 1959, containing staff's recom-

mended assessment of annual charges against the Company. Finding no headwater benefits to the City, staff recommended no assessment against it. The Company objected to the Report and requested a hearing, which the Commission granted. The Secretary of the Interior (Secretary), who represents the proprietary interest of the United States in, among other things, marketing Clark Hill power through the Southeastern Power Administration, was permitted to intervene.

The presiding examiner's initial decision was issued on June 4, 1962. The examiner, adopting staff's recommendations on virtually all the issues, found that the Company should pay $151,465 total annual charges for headwater benefits from Clark Hill to Stevens Creek for the period in issue. This sum includes $10,000 costs of making the determination.

The case is now before us on exceptions to the examiner's decision filed by the Company, and the Secretary, on July 16, 1962, followed by oral argument on January 7, 1963. Staff filed no exceptions. The Company, excepting to many of the examiner's principal determinations, contends that the energy gains from Clark Hill to Stevens Creek are more than offset by the value of capacity losses to Stevens Creek resulting from Clark Hill, and of benefits from Stevens Creek to Clark Hill, and that no annual charges can be assessed against Stevens Creek until future benefits to it produce a net gain. The Secretary agrees with the examiner on most of the basic issues but excepts respecting certain matters described hereinafter.

We conclude that the examiner properly decided the basic issues in this case. He correctly held, first, that Stevens Creek experienced energy gains from Clark Hill but no dependable capacity gains or losses; we disagree, however, with the examiner's minor reduction of energy gains by evaporation losses. Second, he correctly determined the monetary value of energy gains (except for the aforesaid allowance of evaporation losses), and properly disallowed offset thereto claimed by the Company. And third, his "value of service" method of apportioning the annual charges on the Clark Hill headwater improvement between Stevens Creek and Clark Hill in proportion to the respective power benefits received by each is substantially supported by the facts and is reasonable under the law.

The examiner's decision adequately disposes of virtually all the matters urged in the exceptions, so we shall discuss only certain preliminary matters, and a few points respecting the above basic issues, concerning which the examiner's decision should be modified or amplified.

Preliminary matters.—The Secretary excepts to the staff's conferring with the Company concerning this case prior to the Secretary's intervention and without his participation. The Secretary requests that we find that in all future Section 10(f) proceedings involving projects where he has marketing and repayment responsibilities, the Secretary will be extended a right to participate at all stages equal to that afforded any other proprietary interest. The Secretary does not suggest, however, that this case cannot be properly decided on the present record, nor does he request any further hearing.

The right of the Secretary to participate in all future Section 10(f) proceedings to the extent that his interest may be affected is now assured by Commission operating procedures.

The Company questions whether the third paragraph of Section 10(f), and through it the standards contained in the first paragraph of Section 10(f), can properly be applied to Stevens Creek. The Company contends that the Stevens Creek permit was issued in 1910, prior to the 1920 enactment of the Power Act and the 1935 amendment adding the third paragraph of Section 10(f), and that

our assessing annual charges against Stevens Creek would be retrospective and violative of the Due Process Clause of the Fifth Amendment. The examiner's determinations rejecting these contentions are sound. In addition, the Stevens Creek permit in effect during the period in issue expressly provided that the permittee shall pay annual charges for benefits from headwater improvements of the United States (Exh. 3, App. B–2, p. 7).

The Company also excepts to the examiner's conclusion that it is subject to the payment of the $10,000 costs of making this determination. It argues that the purpose of the last sentence of the first paragraph of Section 10(f), which provides that the cost of making the determination shall be paid by the "licensee or permittee affected," is to provide for the apportionment of the costs of making the determination between nonfederal licensees or permittees which *receive* payment of annual charges, as distinguished from parties which, like the Company, must pay the charges. The examiner properly rejected this argument which, we note, would deny this provision of Section 10(f) any meaning or effect whatever in situations such as this case presents.

Benefits to Stevens Creek; reduction from evaporation losses.—The examiner held that Stevens Creek experienced energy gains from Clark Hill but that such gains should be reduced to reflect evaporation losses from the Clark Hill reservoir. Relying on evidence of a staff witness, the examiner found that the average annual evaporation from the Clark Hill reservoir is 42 inches, contrasted with an average annual evapotranspiration loss of 35 inches that would have occurred from the reservoir area if the Clark Hill project had not been constructed, and that the difference of 7 inches represents an average annual net evaporation loss of water which would otherwise have been available for energy production at Stevens Creek.

The Secretary contends that staff's evidence is rebutted by evidence of the Secretary's witness respecting numerous factors not considered by staff's witness, which establish that there is no sufficient basis for finding any net evaporation losses. The Secretary contends that staff's evaporation figure of 42 inches is based on a Weather Bureau paper [1] not intended for such particular use as that made of it here, and that the 35-inch evapotranspiration figure also is not supported. The Secretary also contends that available water is a key factor in determining how much capacity is available for sale and what the rate shall be, and that the Southeastern Power Administration's many contracts for the sale of Clark Hill power recognize no reduction for any net evaporation losses. And he argues that the evidence and judgment of his witness supports this important pricing practice and is entitled to greater weight than the evidence of staff's witness, which was adduced in connection with the relatively secondary matter of determining annual charges for headwater benefits.

We conclude that, on balance, the weight of the evidence favors the Secretary's position that in this case there should be no reduction in Stevens Creek's energy gains for the September, 1950—December, 1955 period in issue on account of evaporation losses from the Clark Hill reservoir. Adjusting the examiner's computations accordingly increases the annual charges assessed against the Company by $7,080.

Monetary evaluation of energy gains; claimed offsets.—The examiner's monetary evaluation of Stevens Creek's energy gains is correct, when adjusted to disallow the evaporation loss he permitted. Respecting offsets, the examiner determined the benefits to Stevens Creek on a calendar year basis from September, 1950, the first full month after the change in stream flow resulting from

[1] U.S. Department of Commerce, Weather Bureau, Technical Paper No. 37, Plate 2.

Clark Hill's construction, through December, 1955. The examiner offset a net loss to Stevens Creek in energy gains during 1952, resulting from the initial filling of the Clark Hill reservoir, against energy gains beginning in September, 1950, thus arriving at October 12, 1953,[2] as the date from which energy gains to Stevens Creek actually began to accrue.

The Secretary contends that the examiner erred in making this offset. The Secretary contends that Section 10(f) requires a determination of annual charges on a yearly basis, and since there were energy gains in 1950, 1951, and 1953, annual charges related thereto are owing regardless of the loss in 1952. Also, the Secretary contends that the 1952 loss cannot be applied against gains because under such cases as *U.S.* v. *Grand River Dam Authority*, 363 U.S. 229, the United States is not liable for depriving an entrepreneur of the use of the river flow since the United States has a superior navigation easement which precludes private ownership of the flow or water. The Secretary further contends that the examiner would have agreed with this position, but thought that the Commission's decision in *Arkansas Power & Light Company*, 16 FPC 1009, required a different result. However, the Secretary says that this interlocutory decision is not binding, or if binding is in error.

The examiner was correct in offsetting Stevens Creek's energy loss in 1952 against its initial energy gains. The examiner did determine the annual charges on an annual basis, but took the realistic view that annual charges did not begin to accrue until Stevens Creek in fact benefited from Clark Hill, and we agree. It is reasonable and equitable under Section 10(f) that there be no assessment for annual charges for headwater benefits until such time as any loss to the downstream project from the initial filling of the upstream reservoir is exceeded by benefits from the upstream facility, for until that time the downstream project cannot fairly be said to have benefited.[3]

The Company's claim that offsets should be made against Stevens Creek's energy gains because of benefits from the downstream Stevens Creek project to Clark Hill presents an entirely different question. Here, the Company contends that although not legally required to do so, Stevens Creek, has, in the interest of navigation, reregulated releases of water from Clark Hill, permitting the latter to operate more efficiently and making unnecessary a government reregulation structure downstream from Stevens Creek. Such reregulation, it says, has saved the government $238,500 for the period involved herein, in not having to construct a reregulating structure downstream from Stevens Creek.[4]

The Company contends that such reregulation benefits from Stevens Creek were recognized by the Corps of Engineers' Report recommending the Clark Hill project,[5] by the Commission's Regional Engineer, and by a former General Counsel of the Commission in testimony at congressional hearings.[6] The Company admits that it cannot enforce a claim against the United States without its consent, but says that under such cases as *Bull* v. *U.S.*, 295 U.S. 247, its benefits to the government can, by way of recoupment, be offset against the government's claims for annual charges. A contrary rule would not be "equitable" under

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[2] Reflecting the evaporation loss adjustment referred to hereinabove changes this date to October 7, 1953.

[3] By the same token, losses in Stevens Creek's dependable capacity, if such were present in this case, would be offset against Stevens Creek's energy gains.

[4] Alternatively, the Company contends that Stevens Creek's reregulating function damaged Stevens Creek's dependable capacity in an amount valued at $576,950 for the period involved herein; and that the addition of $518,200 for claimed dependable capacity gains to Clark Hill entitles the Company to a total maximum offset of $1,095,150.

[5] House Document No. 657, 78th Cong., 2d Sess., 1944, see, *e.g.*, p. 10.

[6] Hearings before Committee on Interstate and Foreign Commerce, U.S. Senate, 86th Cong., 1st Sess., on S. 1782, *et al.*, pp. 18–19.

Section 10(f), it says, and would disincline private companies to construct projects and thus frustrate the best development of waterways contemplated by Section 10(a). And it says that our offsetting Stevens Creek's reduction in generation during the filling of the Clark Hill reservoir against Stevens Creek's gains, discussed *supra*, is analogous. Accordingly, the Company contends that until the benefits from Stevens Creek are exceeded by benefits from Clark Hill, no annual charges are owing by the Company.

The examiner rejected these contentions, ruling "that the determination required to be made by this Commission pursuant to Section 10(f) of the Federal Power Act is limited to the *benefits* which accrue to downstream projects *from* construction work undertaken by an *upstream development*." [emphasis supplied.] We also reject Company's claims because we are satisfied that Congress in enacting Section 10(f) did not make the United States liable for streamflow improvement benefits provided by others.[7] Our allowing offsets for the reduction in Stevens Creek's generation while Clark Hill was filling was necessary to determine what quantum of benefits had accrued from the headwater improvement to the downstream project, which is entirely different from allowing claims for reregulation benefits allegedly provided to a federal water power project.

The Company claims the examiner erred in excluding Exhibits Nos. 10–E and 10–G, consisting of letters in 1954 and 1957, respectively, from the Commission's Regional Engineer to the Company, which the Company says show recognition of reregulation benefits to Clark Hill and dependable capacity losses to Stevens Creek. In view of our conclusions as to reregulation benefits set forth above, the Regional Engineer's comments on this matter could have no significance. As to his statements with regard to dependable capacity, we have determined that they would make no difference in our conclusion on this point even if we were to assume *arguendo* that they were properly part of the record.

Apportionment of annual charges.—Having determined the benefits to Stevens Creek and their value, the examiner then apportioned the annual charges for interest, maintenance, and depreciation on the Clark Hill headwater improvement between Stevens Creek and Clark Hill. In making this apportionment, the examiner adopted staff's "value of service" method, which the Secretary also favors.

Including interest during construction, the total project investment in Clark Hill amounts to $83.1 million. Of this, some $29 million represents the cost of specific power facilities (benefiting Clark Hill only); and the remaining $54.1 million represents the cost of the Clark Hill joint-use facilities. Based on the Corps of Engineers' cost allocation procedures, the latter amount is allocated to the three Clark Hill projects purposes as follows: flood control, $4 million; navigation, $4.3 million; and power, $45.8 million. The examiner then apportioned the annual charges for interest, maintenance, and depreciation corresponding to the $45.8 million investment between Clark Hill and Stevens Creek. Such apportionment was made in the proportion that the amount of the power benefits that each project derived from the headwater improvement bore to the combined total of those benefits. The power benefits to Stevens Creek consist of the monetary value of its energy gains; the power benefits to Clark Hill consist of the monetary cost (because Clark Hill power is sold at cost) of producing at-site power attributable to the joint-use facilities. The cost of the latter power was determined residually by determining the total annual cost of Clark Hill allocated to power, and by subtracting therefrom the annual cost of the specific power facilities.

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[7] See *Grand River Dam Authority* v. *Federal Power Commission*, 246 F. 2d 453 (10 Cir., 1957).

The Company excepts at length to the examiner's method of apportionment, advocating instead its "cost of service" method. The Company's method aims to assess each unit of electric output at Clark Hill and Stevens Creek attributable to storage, by a charge which reflects the cost of the storage service rendered. This method assumes that the Clark Hill dam and reservoir performs two functions, storage and head; that only the storage function benefits downstream projects; and that only the annual charges of that portion of the joint-use facilities allocated to power which are assignable to storage should be apportioned between Stevens Creek and Clark Hill.

The Company estimated what it would cost for two single-function dams, each separately performing the head and the storage functions of the Clark Hill dam, and allocated the Clark Hill annual charges for power to the head and to the storage functions on the basis of the costs of constructing and maintaining these hypothetical head-only and storage-only dams. Then the Company converted the total Clark Hill dependable capacity to units of energy by an equivalence factor of 6.39 to 1 (the ratio of the cost of a megawatt of dependable capacity to the cost of a million kilowatt hours of energy); and added to such units of energy the total annual generation at Clark Hill and the annual energy gains at Stevens Creek. The Company then divided the amount allocated to the storage function of the sum of these energy items to determine annual unit costs of Clark Hill storage service. Applying these estimated unit costs to staff's estimates of energy gains at Stevens Creek, the Company arrived at a total storage "cost of service" assessment of $17,379 for the period in issue. The examiner's assessment was $141,465.

We conclude that the examiner should be affirmed on this issue also. His decision sufficiently describes the lack of merit in the Company's exceptions, as well as the inadequacy of its proposed "cost of service" method. The discussion in the examiner's decision need not be repeated. In addition, we point out that while the "value of service" method may not be the only possible method of determining annual charges, we find that it is reasonable and equitable under Section 10(f), and that it is supported by substantial evidence in the record. No such finding can be made with respect to the "cost of service" method as proposed by the Company. The Company's application of that method is fundamentally defective because of its numerous unrealistic and unsupportable assumptions, including the postulating of two hypothetical head and storage function dams not comparable to the Clark Hill project, the unrealistic estimating of costs for such non-existent structures, and the use of a capacity-energy equivalence factor not derived from Clark Hill costs. Further, it is unsound when judged by its end result. The Company arrives at an average estimated cost of service for benefits from Clark Hill storage of 0.369 mills per kilowatt-hour for the period in issue. In comparison, the Company paid an average of 4.00 mills per kilowatt-hour for Clark Hill dump or surplus power (considering the energy charge alone). In other words, the Company's approach results in an estimated cost of the service provided by Clark Hill of about one-ninth of the energy charge for Clark Hill surplus power.

The Commission further finds:

The presiding examiner's initial decision issued herein on June 4, 1962, should be modified as hereinabove set forth, and as so modified should be adopted as the decision of the Commission as of the date of issuance of this opinion. Except to the extent herein granted, exceptions to the said decision should be denied.

The Commission orders:

(A) The presiding examiner's initial decision issued herein on June 4, 1962, is modified as herein set forth, and as so modified is adopted as the decision of the Commission as of the date of issuance of this opinion.

(B) Except to the extent herein granted, the exceptions to the said examiner's decision are denied.

(C) In compliance with the requirements of Section 10(f) of the Federal Power Act, and of the examiner's decision and this opinion, South Carolina Electric & Gas Company shall pay to the Federal Power Commission $158,545, which includes $10,000 costs of making this determination, such payment to be made within 90 days of the date of issuance of this opinion.

INITIAL DECISION

PROCEEDING PURSUANT TO SECTION 10(f) OF THE FEDERAL POWER ACT

(Issued June 4, 1962)

MARSH, *Presiding Examiner:* This proceeding involves a determination by the Federal Power Commission under Section 10(f) of the Federal Power Act (the relevant portion of which are set out in the margin hereof)[1] of the direct benefits, if any, accruing to the Stevens Creek project of the South Carolina Electric & Gas Company (Company) and the dam and power canal of the City of Augusta, Georgia (Augusta) resulting from the construction and operation of the upstream Clark Hill project of the United States on the Savannah River, and the determination, if it finds that the former projects have been directly benefited by the latter, of the equitable portion of the annual charges for interest, maintenance and depreciation on the Clark Hill project which the owners of the downstream projects should be required to pay annually to the owner of the upstream project, namely, the United States Government.

On December 8, 1952, the Commission issued an order instituting an investigation under Section 10(f) of the Act for the purpose of enabling it to make the determination required by the provisions thereof. The studies deemed necessary therefor, which were made by engineers of the Commission's Bureau of Power, were initiated on February 19, 1953, and they extended over a period in excess of six years.

The results of the Staff's studies (dated May 1959), which covered the period September 1950 through December 1955, were sent to the Company

[1] (f) That whenever any licensee hereunder is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Commission shall require as a condition of the license that the licensee so benefited shall reimburse the owner of such reservoir or other improvements for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission may deem equitable. The proportion of such charges to be paid by any licensee shall be determined by the Commission. The licensee or permittees affected shall pay to the United States the cost of making such determination as fixed by the Commission.

Whenever such reservoir or other improvement is constructed by the United States the Commission shall assess similar charges against any licensee directly benefited thereby * * *.

Whenever any power project not under license is benefited by the construction work of a licensee or permittee, the United States or any agency thereof, the Commission, after notice to the owner or owners of such unlicensed project, shall determine and fix a reasonable and equitable annual charge to be paid to the licensee or permittee on account of such benefits, or to the United States if it be the owner of such headwater improvement.

for comments and suggestions on July 30, 1959. Copies of the studies were also sent to the Secretary of the Interior (Secretary) and to the Chief of Engineers, Department of the Army.[2]

The Commission's Staff concluded from its studies that any benefits to plants along the Augusta canal due to regulation at Clark Hill would not be substantial and that the detailed analysis required to determine the extent thereof would cost more than the value of any benefit payments which might result.

The Company's comments with respect to the Staff's findings in the May 1959 report were sent to the Commission in a letter dated August 13, 1959. In that letter the Company questioned the method and information used in computing energy gains at Stevens Creek (and expressed the view that the report overstated the energy gains by more than 11 percent), the failure to include a correction for evaporation from the Clark Hill reservoir, the failure to allow for what the Company claimed as an adverse effect of Clark Hill on dependable capacity at Stevens Creek, and the method of determining incremental energy costs in hydroelectric and steam-electric plants.

Comments were received from the Assistant Secretary of the Interior in a letter dated October 9, 1959. In a letter signed by the Secretary of the Commission and dated November 4, 1959, all of the Company's contentions except one were rejected. The latter related to a correction for evaporation from the Clark Hill reservoir. Thereafter, the Staff's studies were revised to show the effect of such losses from the Clark Hill reservoir. As so revised the studies were contained in the Staff's engineering report which bears the date line "December 1959," and which was served upon the Company and the Secretary on November 4 and 5, 1959, respectively.

At the request of the Company, the Commission on February 1, 1960, issued an order fixing a hearing respecting the issues raised by the report as revised. Exhibit No. 3 referred to above reflects the basic position of the Commission's Staff in this proceeding.

The Secretary, on April 6, 1960,[3] filed a petition to intervene and on April 25, 1960, the Commission issued an order permitting such intervention.

Pursuant to the Commission's order of February 1, 1960, and the subsequent notice issued by the Secretary of the Commission March 23, 1960, the above entitled matter came on for hearing and was heard before the undersigned. Following the conclusion of the hearing, briefs were filed by the Staff of the Commission, by the Company and by the Secretary.

The Issues

The issues in this proceeding are:

1. Whether the Company is a licensee or permittee within the meaning of Section 10(f) of the Federal Power Act.

2. Whether, as a licensee or permittee, the Company is directly benefited by the construction by the United States of the storage reservoir and other headwater improvements constituting the Clark Hill project.

3. If the issues posed in Paragraphs 1 and 2 above are determined in the affirmative, what part of the annual charges for interest, maintenance and depreciation of such headwater improvement is a reasonable and equitable annual charge to be paid to the United States as the owner thereof.

Is the Company a Licensee or Permittee Under Section 10(f)?

Under the provisions of an Act of Congress approved August 5, 1909, and of the General Dam Act of June 21, 1906, as amended by the action of Congress

[2] Referred to usually as "the Corps of Engineers."

[3] After having sought and been granted an extension of time from March 15, 1960, to April 15, 1960, within which to file such petition.

approved June 23, 1910, the Acting Secretary of War, under date of July 20, 1910, approved the general plans for a dam, powerhouse and waste gates proposed to be constructed at or near Stevens Creek, South Carolina, by the Georgia-Carolina Power Company, the assignee of the rights of certain grantees named in the Act of Congress first above referred to, but upon certain conditions therein specifically set out. Certain further plans and specifications were approved with similar reservations on November 16, 1912. On July 8, 1913, the final plans and specifications for the dam and appurtenances were approved subject also, however, to certain conditions expressed therein and to all conditions previously imposed. In 1928 the project became the property of the South Carolina Power Company and in 1950 the latter was merged with the South Carolina Electric & Gas Company.

The Company and the Staff agree that the Stevens Creek project is not licensed under the Federal Power Act. The Staff asserts, in its brief, that: "Therefore, it is a 'project not under license' within the meaning of the third paragraph of Section 10(f) of the Act."

The third paragraph was added to Section 10(f) by the 1935 amendment to the Act. The last sentence of paragraph one also was added by the 1935 amendment.

The Company concedes that it "operates the Stevens Creek project not pursuant to a license but," rather, it asserts, "pursuant to an express grant to its predecessors by the Act of August 5, 1909 * * * and a permit thereafter issued by the War Department on July 20, 1910." The Company does not dispute the fact that the provisions of Section 10(f) of the Act, as amended by the Act of August 26, 1935, authorize the Commission to assess reasonable and equitable charges against the Company for any downstream benefits conferred by a headwater improvement.

It is concluded, therefore, that the Company was during the period with which we are here concerned a permittee within the meaning of the third paragraph of Section 10(f) of the Federal Power Act as amended and as such is subject to assessment of reasonable and equitable charges pursuant to paragraph one of such section.

The Company does contend, however, in a subsequent portion of its brief that although the final sentence of paragraph one of Section 10(f) was added in 1935 concurrently with the last paragraph of that section, "considering this sentence [the last in paragraph one] in the context of the paragraph in which it is found it is perfectly clear that the 'permittees' referred to are the *same* 'permittees' as are mentioned in the first sentence of that paragraph—the non-federal owners of a headwater improvement who have constructed and are operating the upstream project under a permit rather than a license." And, it is contended that "These *upstream* project owners are the only 'permittees' mentioned in the entire section."

Such an interpretation of the word "permittee" in the last sentence of paragraph one would result in the perpetuation of one feature of the discrimination in favor of those who had not obtained a license under the Federal Power Act as against those who had, the elimination of which patently was the purpose of the 1935 amendments referred to above. To interpret the language so as to subject downstream unlicensed projects to assessments for upstream charges without making them also subject to their share of the costs of determining the proper proportion of such charges to be so assessed does violence to the Congressional intent.

It is concluded, therefore, that for the purpose of the determinations and the assessments herein required to be made for the period here involved, namely, September 1950 through December 1955, the Stevens Creek project is a "project

not under license" but that the Company is a "permittee" within the meaning of the last sentence of the first paragraph of Section 10(f) of the Federal Power Act as amended.

Are Downstream Projects Benefited?

It seems obvious that if appropriate studies reveal that the downstream projects here involved are not, or were not within the period under consideration, "directly benefited" by the construction work of the United States in connection with the storage reservoir and other headwater improvements at Clark Hill there is no occasion for reimbursement to the owner of the upstream project as provided in Section 10(f). It becomes necessary then to make this determination. But before doing so there will be set out a brief description of the projects involved both upstream and downstream.

The Headwater Improvement Project

The Clark Hill project consists of an earth and concrete dam, a reservoir, and power generating and switching facilities located on the Savannah River in Georgia and South Carolina about 21.7 miles upstream from Augusta, Georgia. It was constructed by the Corps of Engineers for the purposes of navigation, flood control and hydroelectric power. The power plant has an installation of 280,000 kilowatts in seven units of 40,000 kilowatts each. The first unit was placed in commercial operation in January 1953 and the last in July 1954. The reservoir has a total controlled storage capacity of 2,900,000 acre-feet of which 1,340,000 acre-feet are considered conservation storage, 390,000 acre-feet flood control storage, and 1,170,000 acre-feet as dead storage. The gross power head is 136 feet. The power output of the project is marketed by the Southeastern Power Administration (SEPA).

Affected Downstream Projects

Stevens Creek Project

The Stevens Creek hydroelectric project is on the Savannah River (mile 209.7) about 8.7 miles upstream from Augusta, Georgia, and 13 miles downstream from the Clark Hill project. It was constructed during 1913 and 1914 for the Georgia-Carolina Power Company, and, as has been stated, is operated under a permit which was issued to the Georgia-Carolina Power Company on July 20, 1910.

The project consists of a dam, reservoir, and power generating facilities. The dam is about 25 feet in height, and consists of a concrete ogee spillway 2,000 feet long with a crest elevation of 183.3 feet mean sea level with 1,000 feet of 4-foot flashboards and 1,000 feet of 5-foot flashboards installed on top of the crest. It contains a hand operated navigation lock having a lift of 29 feet and a lock chamber 30 by 150 feet. The project has 12,600 acre-feet of pondage between the top of the lower flashboards (elevation 187.3) and the estimated practical limit of drawdown at elevation 182.6. The total storage at elevation 187.3 was estimated to be approximately 16,100 acre-feet. The gross power head is 29 feet. The power installation consists of eight 2,360-kilowatt units, giving a total installed capacity of 18,880 kilowatts. Five are original units installed in 1914, and three are replacement units installed in 1925 and 1926.

City of Augusta, Georgia

The City of Augusta, Georgia owns and operates a dam on the Savannah River about 7.5 miles upstream from the City, 14.2 miles downstream from the Clark Hill project and about one mile below the Stevens Creek project. The upper portion of this dam is licensed under the Federal Power Act as minor part Project No. 746 under a 50-year license dated June 24, 1929. The dam is about 14 feet

high, extends completely across the river and diverts water into a power canal also owned by the City. Within the City, water is diverted from the main canal to form canals at two lower levels. There are four water power users on these canals. Two of them utilize the head between the main canal and the river, another uses the head between the main canal and the third level canal, and a fourth user utilizes the head between the second and third levels.

Energy Gains at Downstream Projects Attributable to the Upstream Project

It appears to be agreed that in order to determine the benefits, if any, to owners of downstream projects within the meaning of Section 10(f) of the Act there must be determined the energy gains, if any, and the dependable capacity gains, if any, at such downstream projects which are attributable to the improvement upstream. As has been pointed out, in the Company's reply of August 13, 1959, to the Commission's letter of July 30, 1959, the Company questioned the method and data used by the Staff in computing energy gains at Stevens Creek and expressed the view that without any allowance for evaporation losses such gains were overestimated by more than 11 percent.

Data compiled by the Corps of Engineers showed that the first change in flow at Clark Hill, due to the Clark Hill project, was on August 17, 1950, and the Staff studies were begun with the first full month after the first change, namely, September 1950. Some question was raised as to the accuracy of the data available for the year 1956. The latter year was, therefore, excluded and the Staff's studies cover only the period September 1950 through December 1955. These studies showed also, however, that the period September 1, 1950, through October 11, 1953, represented the period during which the value of the reduction in generation at Stevens Creek due to the initial filling of the Clark Hill reservoir was balanced by the value of subsequent energy gains at Stevens Creek. October 12, 1953, was then adopted by the Staff as the beginning of the period for which headwater benefit payments should be determined.

The actual energy generated by a plant downstream from an upstream storage project is a matter of record. The problem is to estimate the amount of energy the downstream plant would have produced if the upstream storage project had not been constructed. After that estimate is made, the amount thus estimated is subtracted from the actual energy generated to obtain the estimated gain in energy attributable to the upstream storage project.

In undertaking the determination of energy gains at Stevens Creek attributable to the Clark Hill stream flow regulation, the ideal condition would have been attained by the development of the plant characteristics under varied flow and head conditions, but the development of these characteristics would have had to be based on complete plant data, including discharges through the plant obtained prior to regulated flows and for specific time periods. Records of water discharges through the turbines at Stevens Creek were not available and it was not possible, therefore, to determine plant efficiencies in the usual manner for varying conditions of head and water use.

At least three approaches to the problem of estimating what energy the Stevens Creek plant would have produced if Clark Hill had not been constructed were considered by the Staff and the Company and abandoned because of some deficiencies therein.

Charts furnished by the Company showed the relationship between kilowatts on the switchboard and discharge in cubic feet per second for the main units. Those curves, however, were not considered by the Company as "suitable for present day conditions" since five units were installed in 1914, one in 1925, and

two in 1926. Also, the silting of the reservoir in the vicinity of the intake structure and the reduced efficiency of the racks had, the Company contended, introduced considerable change in the rating of the units.

An attempt was made to develop plant efficiencies from available discharges using recorded elevations and output, but no pattern could be developed whereby natural flows at Stevens Creek could be determined within reasonable limits of accuracy on a daily basis.

The Staff then attempted to employ the flow of the river at Augusta, but those studies when plotted as discharge versus efficiency gave such a wide pattern that it was agreed that this method would not show satisfactory results.

It was finally decided by the Staff that the determination could best be achieved by the use of curves showing the relationship between monthly unregulated stream flow at Clark Hill and monthly actual generation at the Stevens Creek plant prior to Clark Hill regulation. For that purpose the 1929–1949 period was chosen.

There were inconsistencies in the data for the period 1929 through 1938 resulting from the fact that prior to 1939 the system load was not sufficient to require the full operation of the Stevens Creek plant and some water was then wasted. Because of that, the period 1939 through 1949 was used to develop the basic correlation. The Company questioned the results of this type of study due to the fact that during higher flows, water is spilled over the dam and is not used for power production.

The maximum water capacity of the eight turbines at Stevens Creek was estimated at 10,400 cubic feet per second and the Staff termed this the "usable flow" at the plant. It was estimated that, based upon drainage area relationships,[4] without Clark Hill when the flow at Stevens Creek (with a drainage area of 7,173 square miles) reached that level (10,400 cubic feet per second), the flow at the Augusta gauge downstream (with a drainage area of 7,508 square miles) would be 11,000 cubic feet per second, and at the Clark Hill site (with a drainage area of 6,144 square miles), 9,000 cubic feet per second. The part of the total monthly flow which could have been used at Stevens Creek was estimated by using the reported daily flows at Augusta. For each month, all daily flows at Augusta, excluding daily flows in excess of 11,000 cubic feet per second, were totaled. The sum of these daily flows was divided by the sum of all daily flows including those in excess of 11,000 cubic feet per second to obtain the ratio of usable flow to total flow at Stevens Creek. The ratio thus derived was applied to the estimated average monthly flows at the Clark Hill site to obtain average monthly flows at the Clark Hill site usable at the Stevens Creek plant. These average monthly usable flows at the Clark Hill site during the period 1939 through 1949 were then related to the corresponding actual monthly generation at Stevens Creek. This was done by preparing a set of 12 monthly curves showing the actual monthly generation at the Stevens Creek plant versus usable natural stream flow at Clark Hill. Adjustments were made in the curves until a test run for the 1939–1949 period resulted in total generation for the 11-year period to be the same as that reported, and a deviation of 3.7 percent high in the maximum year and 3.8 percent low in the minimum year.

There were procured from the Corps of Engineers daily data on the Clark Hill operations for the period August 1950 through December 1955. Recorded daily discharges from the Clark Hill reservoir and the daily changes in storage were used to compute the average daily inflow into the reservior. Thus, the average daily inflow so computed represented the average daily natural flow that would have been experienced at the Clark Hill site if the reservoir had not been in

[4] Stevens Creek, 7,173 square miles; Augusta, 7,508 square miles; Clark Hill, 6,144 square miles.

operation during the 1950–1955 period, assuming no correction for reservoir evaporation losses. The average monthly usable flow at the Clark Hill site was computed by the Staff by disregarding any daily inflow in excess of 9,000 cubic feet per second. These computed usable natural flows are shown in the Staff's study for each month from September 1950 through December 1955. They were used by the Staff to derive from the monthly correlation curves described above the computed monthly generation at Stevens Creek based on natural stream flows. The difference between the actual generation and the computed generation represents the gain (or loss) in generation at Stevens Creek before adjustment for net evaporation losses from the Clark Hill reservoir. Without consideration of evaporation the estimated annual energy gains (or losses) at Stevens Creek so determined by the Staff and attributed by the Staff to the Clark Hill project, are as follows:

Period	*Energy gains (or losses) (kilowatt-hours)*
September–December 1950	100, 000
1951	1, 020, 000
1952	(5, 710, 000)
1953	11, 490, 000
1954	30, 580, 000
1955	11, 530, 000
Total	49, 010, 000

During the course of the Staff's studies, which, as has been pointed out, extended over a period of several years, conferences were held between the Staff and Company representatives at which proposed procedures were discussed and criticized. It appears to have been agreed between the Company and Staff representatives that the table of relationship between the Clark Hill flow and Stevens Creek generation, prepared from the curves derived by the Staff, offered a reasonable way of determining what the Stevens Creek plant could generate if Clark Hill had not been developed. At the hearing a Company witness testified that the Company had agreed that it would not object to the use of natural flows at Clark Hill, rather than natural flows at the Augusta gauge, provided a satisfactory correlation could be obtained between Stevens Creek generation and natural flows at Clark Hill. In its brief the Company states that:

> If such correlation could be developed, it would probably provide a practical basis for use in determining the energy gains at Stevens Creek following closure of the Clark Hill dam. However, the pertinent test of such correlation curves is not merely whether there appears to be a satisfactory correlation between Stevens Creek generation and computed natural flows at Clark Hill for the 11-year period *prior* to the construction of Clark Hill. The pertinent engineering test is whether the use of such correlation curves provides reasonable estimates of the energy gains at Stevens Creek attributable to Clark Hill storage, *after* the construction of that project.

A company witness testified that the curves prepared and used by the Staff were not a reliable basis for determining such energy gains because:

1. Individual curves were developed for each calendar month and differences exist between the curves for each month.

2. He had been unable to find any physical basis for such variations in the general shape of the correlation function.

3. The differences in shapes for the various months were the result of random variations in the data, demonstrating that the statistical methods employed by the Staff were not adequate to eliminate the effects of such variations.

The Company's witness testified that although the correlations were stated to have been developed on the assumption that daily flows at Clark Hill in excess of 9,000 cubic feet per second would not be usable at Stevens Creek, the Staff's exhibits show that the "usable flow" at Clark Hill did exceed an average of 9,000 cubic feet per second in a number of months and that the correlation it developed for each month showed variations in the kilowatt-hours per month corresponding to a given average monthly flow.

The Company undertook further to show that the energy gains determined by the Staff would require that the storage releases from Clark Hill be converted into electric energy at efficiencies that are unrealistic. It submitted a study showing the increase (or decrease) in average flows in cubic feet per second, the yearly gains in megawatt-hours, the adjustment for evaporation, the adjusted yearly gains in megawatt-hours and the required efficiency in percents for the period 1950–1955 here under consideration. These figures were derived from the Corps of Engineers' data as to daily inflows and outflows at Clark Hill after eliminating in both instances all daily flows in excess of 9,000 cubic feet per second. They show efficiencies required for 1951 of 43.5 percent, 1953—100.4 percent, 1954—79.4 percent and 1955—85.1 percent. Thus, it will be seen that the imputed efficiencies for these periods vary widely.

As a further test of the use of the Staff's correlation, the Company submitted a study showing the required efficiencies in the years 1956 to 1959 inclusive, derived from the use of the methods employed by the Staff but using actual data. For these years the imputed efficiencies were computed at 147.2 percent for 1956, 230.3 percent for 1957, 125.3 percent for 1958 and 343.3 percent for 1959. It is the position of the Company that these figures presuppose the realization of efficiencies not theoretically possible from an engineering standpoint.

In a tabulation submitted by the Company, intended to arrive at the kilowatts per cubic feet per second achieved at the Stevens Creek plant for the period 1951 through 1955, there were set out, first by months the actual monthly flows experienced at Augusta, derived from U.S.G.S. water supply papers; the amount of water stored (or drawn) from Clark Hill during the month based on U.S.G.S. surface water supply tables[4]; the estimated incremental flow between Stevens Creek and the Augusta gauge determined by taking 4.46 percent of the algebraic sum of the two items first above described[5]; the computed flow at Stevens Creek[7]; the energy actually generated each month at the Stevens Creek plant from plant records[8]; the generation at Stevens Creek in average megawatts; and finally, the kilowatts per second feet realized at Stevens Creek for each month during the period.

As so determined the kilowatts/cubic feet per second average for each of the year studied was found to be as follows:

1951	1.65
1952	1.69
1953	1.73
1954	1.65
1955	1.69

For the 1951–1955 period the factor averaged 1.68 kilowatts/cubic feet per second.

[4] The algebraic sum of the monthly flows and water stored was said to represent what the flow at the Augusta gauge would have been in the absence of Clark Hill.

[5] That percentage represents the incremental drainage area between Stevens Creek and Augusta expressed as a percentage of the total drainage area above Augusta.

[7] The difference between the stream flow at Augusta and the incremental flow between Stevens Creek and the Augusta gauge represents the actual flow at Stevens Creek.

[8] Dividing the energy actually generated each month at the Stevens Creek plant by the appropriate number of hours in each month results in the average megawatts.

Applying the conversion factor of 1.68 to the difference between the usable monthly inflow at Clark Hill based on data furnished by the Corps of Engineers but eliminating all daily flows in excess of 9,000 cubic feet per second, and the usable discharge from Clark Hill based on similar data and with similar exceptions, the Company arrived at energy gains attributable to Clark Hill's storage for each month during the period September 1950 to December 1955. Without consideration of evaporation the Company thus arrived at aggregate energy gains for the periods indicated as follows:

Period	*Energy gains (or losses) (kilowatt-hours)*
September–December 1950	(45,000)
1951	1,652,000
1952	(5,972,000)
1953	7,908,000
1954	26,675,000
1955	9,273,000
Total	39,491,000

The Staff contends that the large difference between the Company's and the Staff's estimate of gross energy gains is due to several basic deficiencies in the method of estimating employed by the Company witness. As has been said, the Company excluded in each of the months within the period above described all daily flows into the Clark Hill reservoir in excess of 9,000 cubic feet per second. This exclusion was based on the assumption that when the natural flow into the Clark Hill reservoir was 9,000 cubic feet per second the natural flow at the Stevens Creek plant would be 10,400 cubic feet per second, the maximum water capacity of the Stevens Creek turbines. This assumption, similarly, is based on the theory that the natural stream flow at Stevens Creek would be greater than the natural stream flow at the Clark Hill site, the difference resulting from the ratio of the respective drainage areas. This, the Staff's brief asserts, is the same method used by a Staff witness to estimate the monthly flow into the Clark Hill reservoir which would be usable at the Stevens Creek plant.

Usable discharges at Clark Hill, based upon the Corps of Engineers' data, were also adjusted by the Company witness to eliminate daily flows in excess of 9,000 cubic feet per second. This treatment assumes, as pointed out in the Staff brief, that on every occasion on which 9,000 cubic feet per second or more is being released from Clark Hill, at least 1,400 cubic feet per second (the difference between the release at Clark Hill and the maximum water capacity of the Stevens Creek turbines) would be available from the drainage area between Clark Hill and the Stevens Creek plant. Staff counsel points out that when the Clark Hill reservoir is storing water at a time when the inflow below Clark Hill is high, a greater portion of the inflow below Clark Hill would be usable at Stevens Creek than would have been usable if Clark Hill were not there. The Staff contends that accurate estimates of energy gains at Stevens Creek cannot be obtained by ignoring this important factor. Stevens Creek, a tributary stream, enters the river in this stretch and although its drainage area is small, the rainfall is rather high. Frequently, prior to Clark Hill this inflow caused the Stevens Creek plant to lose the flashboards for short periods of very high flow.

The Staff insists that the Company's erroneous estimates of increases of usable water at Stevens Creek attributable to the operation of the Clark Hill dam and reservoir, which were used in connection with the determination of

plant efficiencies at which the Stevens Creek plant would have to operate to convert the increases in flow to energy gains estimated by the Staff, necessarily result in erroneous efficiency factors. The Staff witness conceded that he had made no studies of the Stevens Creek plant efficiency related to the estimated energy gains as they had been determined by the Staff. He explained that those gains represented the difference between actual generation at Stevens Creek and the estimated generation that would have been obtained at Stevens Creek under conditions of natural stream flow. An efficiency, this witness said, related only to the estimated energy gains would have no meaning unless the head and efficiency at Stevens Creek were the same under actual conditions of regulated stream flow as they would have been under conditions of natural stream flow. Such an assumption with respect to head and efficiency was not made in the Staff's study. Also, an efficiency related to estimated energy gains at Stevens Creek would have no meaning unless it were developed by using the increase in usable flow at Stevens Creek. In the Company's exhibits (Nos. 4–A and 4–B) the estimated energy gains are at Stevens Creek but the estimated increases in usable flow are at Clark Hill.

To illustrate his thesis regarding an efficiency related only to estimated energy gains, the Staff witness prepared a computation in which he assumed two conditions of stream flow, head and efficiency. In one instance he assumed a usable regulated stream flow of 10,000 cubic feet per second, a head of 28 feet, and an efficiency of 73 percent. Under those assumptions the plant would produce 17,322 kilowatts of power. In the other instance, the witness assumed a usable natural stream flow of 9,000 cubic feet per second, a head of 27 feet, and an efficiency of 70 percent. This plant would produce 14,415 kilowatts of power. The witness then computed an efficiency pertaining to the increment of stream flow and increment of power between instance No. 1 and instance No. 2 using, first a head of 28 feet, and second a head of 27 feet. The results showed that if 1,000 cubic feet per second of water were to produce 2,907 kilowatts of power, when the head is 28 feet, an efficiency of 123 percent would be required; that if 1,000 cubic feet per second of water were to produce 2,907 kilowatts of power when the head is 27 feet, an efficiency of 127 percent would be required. Obviously, an efficiency in excess of 100 percent is impossible.

Actually, the witness said, under his assumptions, 1,000 cubic feet per second of water would not produce 2,908 kilowatts of power. The latter amount of power is simply the difference between the power produced by 10,000 cubic feet per second of water utilized at an efficiency of 73 percent and a head of 28 feet and 9,000 cubic feet per second of water utilized at an efficiency of 70 percent and a head of 27 feet.

Replying to the Company's criticism of its correlation curves on the grounds that for the same flow in different months there occurs a difference in generation of as much as 16 percent, the Staff points to the Company's exhibit which shows that an average usable flow at Stevens Creek of 3,605 cubic feet per second produced 5,490,000 kilowatt-hours of energy in January 1953, while 4,286 cubic feet per second produced only 5,254,000 kilowatt-hours in January 1955, a difference in output per unit of water of 24 percent.

A witness for the Secretary testified that in his opinion the elimination of portions of natural flow and regulated discharges above the "usable flow" of 9,000 cubic feet per second introduces a substantial error into the determination of the increase in "usable water." A study made by this witness of the Clark Hill natural inflows and discharges usable at Stevens Creek for days of natural inflows or discharges at Clark Hill of 9,000 cubic feet per second or more reveal that the weighted average Clark Hill natural inflow usable at Stevens Creek for

the years 1950–1955 inclusive was 8,593 cubic feet per second over a period of 308 days. The study also showed that the weighted average Clark Hill discharge usable at Stevens Creek for the same period was 9,174 cubic feet per second covering a period of 233 days. The testimony of this witness is that had the Company used an average of 8,593 cubic feet per second as the maximum usable natural flow at Clark Hill, its estimate of total usable natural flow would have been decreased. On the other hand, had it used the figure of 9,174 cubic feet per second, its estimate of total usable discharge would have been increased. Both of these changes would have had the effect of showing a larger increase in water available for generation at Stevens Creek.

In connection with his study, the Secretary's witness estimated the usable flows at Stevens Creek both with and without Clark Hill for each month during the period beginning with September 1950 and ending with December 1955. These usable flows were determined by adding to the actual outflows and to the computed inflows at Clark Hill the estimated tributary inflows between Clark Hill and Stevens Creek determined by use of the Modoc gauge (drainage area, 545 square miles). This study assumed the use of all flows not in excess of 10,400 cubic feet per second at Stevens Creek. The comparison showed the increase (or decrease) in such usable flows at Stevens Creek. Dividing the equivalent of the actual generation at Stevens Creek for each month by the estimated usable flows at Stevens Creek with Clark Hill, the witness developed kw/cfs factors. Those factors were then applied to the difference between the estimated usable flow at Stevens Creek with Clark Hill and the estimated usable flow at Stevens Creek without Clark Hill to obtain the monthly increase (or decrease) in generation at Stevens Creek. The witness thus found a net increase in kilowatt-hours generated at Stevens Creek due to the Clark Hill project of 46,075,000 kilowatt-hours as follows:

Period	*Energy gains (or losses) (kilowatt-hours)*
September–December 1950	36,000
1951	2,155,000
1952	(3,831,000)
1953	9,095,000
1954	27,891,000
1955	10,729,000
Total	46,075,000

The Secretary's witness did not, however, consider the annual figure thus developed as a proper estimate of the energy gain. The basic deficiency in the method used by the Company, the Secretary's witness said, is that it does not take into consideration any changes in head or "other factors" which may have resulted from Clark Hill. The method followed by the Staff, since it develops factors for a time when Clark Hill was not in existence, will, when applied, automatically take into account any change in head or other factors which may have resulted.

Based primarily upon values of the daily average head for each day this witness found the average head in 1949 to be 27.1 feet; in 1950—28.0 feet; in 1951—28.9 feet; in 1952—28.4 feet; in 1953—28.2 feet; in 1954—28.1 feet; and in 1955—28.0 feet.

This study revealed that in 1949, the last full year before Clark Hill affected the Stevens Creek operations, the Stevens Creek head was 0.9 feet lower than it was in the lowest of the succeeding years and 1.8 feet lower than it was in 1951, the highest of the succeeding years. While he did not claim that these

data show an absolute increase of such magnitude, it did indicate, the Secretary's witness said, some increase in head.

The tabulation presented by the Secretary's witness showed that the head during periods when flashboards were down was substantially less than the total average head for the year. The difference in 1949 was 0.4 feet; for 1950—1.0 feet; 1951—1.7 feet; 1952—1.4 feet; 1953—0.5 feet; 1954—1.2 feet; and for 1955—0.2 feet. The witness pointed out that an increase of 0.18 feet is all that would be needed to bring the intervener's estimate of energy gain to the 49,010,000 kilowatt-hours estimated by the Staff's witness. He expressed the opinion that the method followed by the Staff was reasonable and except with respect to evaporation, which will be discussed more fully below, resulted in figures as nearly correct as can be determined.

The Company concedes that in principle the Secretary's witness' study presents a reasonable approach to the problem but contends that it is subject to two deficiencies. He used a different factor for each month instead of an average factor which would eliminate the effect of purely random variations arising from the fact that stream flow measurements are subject to both plus and minus errors; and he based his estimate of incremental flow below Clark Hill on the Modoc gauge but then multiplied the Modoc readings by the ratio of the drainage area between Clark Hill and Stevens Creek and added this product to the computed discharge for Clark Hill.

As the Company pointed out, the Secretary's witness came up with a gross energy gain that was about midway between the determinations made by the Staff on the one hand and by the Company on the other.

The Company contends also that the reduction in head at Stevens Creek because of Clark Hill reduces the energy gains at Stevens Creek. They point to Exhibit Nos. 36 and 37 to show that for comparable water years before and after Clark Hill, effective heads at Stevens Creek were lower after Clark Hill. The Staff in its brief had said that "a mere comparison of average annual head is not conclusive because the combination of head and water is required to produce kilowatt-hours of energy." The Company replied that Exhibit Nos. 36 and 37 do not purport to reflect energy gains at Stevens Creek but simply make plain the inaccuracies in the testimony of the Secretary's witness.

Furthermore, the Company's brief recites, Exhibit Nos. 36 and 37 are not comparisons of average head in comparable water years. They show that for the four years in question the hourly heads at Stevens Creek were consistently lower after Clark Hill than before.

The Company's evidence shows that the Stevens Creek plant is a low-head plant with no seasonal storage and that it is operated as a part of an electric utility system with large amounts of thermal generating capacity. It shows that in carrying a system load with an annual peak equal to the peaking capability of the combined resources, fuel costs are minimized by maximizing hydro generation at low-head plants such as Stevens Creek.

On the other hand, Clark Hill is operated solely as a peaking plant and its water releases fluctuate over a very wide range. The hourly discharge at Clark Hill has ranged from 27,000 to 60 cubic feet per second within a 24-hour period. It appears that regardless of such extreme variations, Stevens Creek is expected to maintain a discharge of around 5,300 cubic feet per second. The Company contends that since the drainage area between Clark Hill and Stevens Creek is about 17 percent of the drainage area above Clark Hill, and since during low-water months in the 1950–1955 period, Clark Hill's flow ranged between 2,000 and 3,000 cubic feet per second, incremental flows below Clark Hill could not have exceeded 600 cubic feet per second. There would have resulted a

weekend draft on Stevens Creek storage, the Company contends, of 4,600 cubic feet per second. Over a 56-hour period such a rate of draft corresponds to approximately 5,300 acre-feet.

The Staff's study reveals that Stevens Creek has 12,600 acre-feet of pondage between the top of the lower flashboards and the estimated practical limit of drawdown. Five thousand three hundred acre-feet corresponds to a reduction of approximately 2.4 feet in elevation. The Company insists that in the light of the operations normally followed in such a situation, it is absurd to claim that the drafting of Stevens Creek pondage on the basis of the weekly cycle reflected in the evidence herein can possibly result in heads that are higher than would have resulted from maintaining a full pond at all times.

The Company asserts in its brief (page 12) that its witness, recognizing that the only effect on head at Stevens Creek resulting from Clark Hill would be a reduction of some degree, did not make the refinements which the Staff considered necessary in the Company's calculation. However, the Company contends, such adjustments could have resulted in a reduction in energy gains, attributable to a loss of head, of 7.3 million kilowatt-hours. This amount exceeds the difference between the Company's and the Secretary's estimates of gross energy gains of approximately 6.5 million kilowatt-hours by 800,000 kilowatt-hours. Consequently, the Company argues, whatever differences may exist betwen the Company's and the Secretary's final figures resulting from refinements in calculating incremental usable flows, are more than offset by the reduction in energy gains resulting from the reduction in head at Stevens Creek. It is, therefore, evident, the Company's argument continues, that proper application throughout the same basic method used both by the Secretary and the Company produces more accurate and reasonable results than the radically different approach of the Staff. Hence, gross energy gains in the magnitude of approximately 39,000,000 kilowatt-hours is the proper figure, the Company concludes, to be used as the starting point for all subsequent computations.

Recapitulation of Gross Gains or Losses

To recapitulate, the gross energy gains or (losses), before consideration of evaporation, as found by the Staff, the Secretary and the Company for the periods indicated were (in kilowatt-hours) as follows:

Period	Staff	Secretary	Company
September–December 1950	100,000	36,000	(45,000)
1951	1,020,000	2,155,000	1,652,000
1952	(5,710,000)	(3,831,000)	(5,972,000)
1953	11,490,000	9,095,000	7,908,000
1954	30,580,000	27,801,000	26,675,000
1955	11,530,000	10,729,000	9,273,000
Total	49,010,000	46,075,000	39,491,000

The energy gains at Stevens Creek for the periods above set out which are attributable to the Clark Hill project obviously are not determinable by mathematical calculation. The absence of complete stream flow and other relevant data requires that many assumptions be made. The validity of some of these assumptions has been put to very severe tests in this proceeding. In the final analysis, judgment must be freely applied in making the determination. The record shows that the Staff devoted a great deal of time and effort to the solution of the problems involved. In its negotiations with the Company it displayed a notably impartial attitude in an effort to arrive at a fair and equitable

determination of energy gains at Stevens Creek as a result of the Clark Hill installation. The Staff obviously weighed with care the criticism and the suggestions of the Company directed at its study and the results thereof. While the methods employed cannot be expected to achieve a perfect answer, they do, in the opinion of this examiner, achieve as nearly a just and equitable result as possible on the basis of the record made herein. It is concluded, therefore, that the Staff's determination of gross energy gains at Stevens Creek attributable to the Clark Hill installation is (before consideration of evaporation) a fair and equitable one.

The Effect of Evaporation on Clark Hill Reservoir

Evapotranspiration is the amount of moisture which disappears into the atmosphere from evaporation and plant transpiration. Prior to construction of the Clark Hill reservoir, there were evapotranspiration losses from the reservoir area. After the construction of Clark Hill, there were evaporation losses from the surface of the reservoir.

The question as to the effect of evaporation at Clark Hill on the computation of downstream benefits was first considered on October 14, 1953, at a conference which was attended by the Staff and Company representatives. At that time it was agreed among them that there would be "no correction" for evaporation which stipulation rested upon the assumption that water losses from consumptive uses by vegetation and land evaporation prior to the construction of the reservoir were equal to the free-surface evaporation of the reservoir. The letter received by the Staff from the Company subsequent to the receipt of the report of May 1959 (*supra*, p. 632) placed the question under active consideration again. Upon the basis of additional information which became available shortly prior to November 4, 1959, the Staff applied a net annual evaporation loss of seven inches for use at Clark Hill and adjusted the energy gains accordingly.

The average annual net evaporational loss of seven inches was taken as the difference between an estimated annual evaporation of 42 inches from the Clark Hill reservoir and estimated evapotranspiration losses of 35 inches in the reservoir area prior to the construction of the Clark Hill dam. The data which the Staff used for this purpose were contained in United States Weather Bureau technical paper No. 37 entitled "Evaporation Maps for the United States" dated August 1959, and a publication entitled "Three Water Balance Maps of Eastern North America" published by Resources for the Future, Inc., under date of November 1958.

The average annual evaporation of 42 inches employed for the Clark Hill reservoir was taken directly from technical paper No. 37. One of the three water balance maps appearing therein showed the magnitude of evapotranspiration under optimum moisture conditions. By interpolation, the figure for the Clark Hill reservoir area was estimated by the Staff to be 36.5 inches. Another such map showed the mean annual water deficit (the difference between potential evapotranspiration and actual evapotranspiration) for the Clark Hill reservoir area to be 2.0 inches. Thus, the difference between the potential evapotranspiration of 36.5 inches and the water deficit if 2.0 inches is 34.5 inches.

After consideration of all these factors the Staff selected 35 inches as a reasonable amount for average annual evapotranspiration for the Clark Hill reservoir area. However, before finally adopting this figure, a Staff witness made an additional study of precipitation and run-off-data in the vicinity of the Clark Hill reservoir as a means of estimating evapotranspiration losses. Records of precipitation and run-off corresponding to the area of the Clark Hill reservoir were not available. The witness, therefore, selected three areas adja-

cent to or partially within the reservoir area. There was indicated by these data annual evaporational losses in these three adjacent areas of 35.29 inches, 35.80 inches and 31.79 inches, respectively. These computations appear to support the selection of the figure of 35 inches.

It is the position of the Secretary that no deduction from estimated annual energy gains or losses at Stevens Creek attributable to the Clark Hill project should be made because of evaporation from the Clark Hill reservoir. The Chief of the Division of Power Operations of the Southeastern Power Administration, within the Department of Interior, testified that he had made studies relating to evaporation in western reservoirs where, because of prevailing conditions evaporation from a reservoir surface exceeds evapotranspiration from the pre-reservoir area. He had made other studies in connection with the sale of power from projects in the Cumberland River basin and some projects in North and South Carolina. The method of analysis was to determine the net run-off of the ungauged area including the reservoir by subtracting the combined run-off of all gauged tributaries from the run-off at the dam site. This net run-off was then subtracted from the rainfall on the unguaged area, estimated from all available rain gauges in the area, to arrive at the evaporation and transpiration losses. In all other instances in which the witness participated in such studies, it was concluded that no correction should be made increasing or decreasing the losses.

The Secretary's witness testified that he had examined the two publications upon which the Staff witness had based his estimate of evaporation and was of the opinion that neither of them should be used to determine the exact difference between reservoir losses and pre-reservoir losses for a particular year and in a particular reservoir. He considered of some significance the fact that neither publication involved any study with respect to any particular reservoir in the area in which Clark Hill is located and neither, therefore, provided a specific answer to the problem.

The Secretary's witness testified further that had he undertaken to estimate evapotranspiration losses in the Clark Hill area he would have included rainfall stations which the Staff witness had not used. However, he said that if all such stations had been used, the results would still be questionable. Further, the witness said, consideration would also have to be given to several factors which the witness testified were working in the opposite direction which would affect natural stream flows at Stevens Creek. The witness considered of major significance the fact that the Staff's conclusion was not consistent with the findings and practices of the Southeastern Power Administration in the contracts which it had entered into for the sale of electricity; that it conflicts with this Commission's conclusions in a prior 10(f) proceeding involving the Government's Allatoona reservoir; and it conflicts with the prior agreement reached between representatives of the Federal Power Commission and the Company in this proceeding. On cross-examination the Secretary's witness conceded that he had made no studies of evaporation losses at Clark Hill.

It appears to be the Secretary's contention that a reversal of precedent and practice which he had established and followed could only be justified in this proceeding by a complete study of evaporation and evapotranspiration losses from the Clark Hill reservoir and of the reservoir area, and that the burden of justifying such a reversal is upon him who proposes a different result. This argument, it is believed, can be accorded little weight in determining the issue here present.

It is not believed that such a "reversal of precedent" places upon the Staff, or the Company, a burden to prove by a preponderance of the evidence that

there is such a loss or just how much it is. The Staff's presentation is persuasive that the allowance which it has made for evaporation is a reasonable one.

A study prepared for the Select Committee on National Water Resources, United States Senate, by the Department of Agriculture[9] seems clearly to support the Staff's position.

It is concluded, therefore, that the Staff's proposed adjustment for evaporation losses is fair and reasonable and, therefore, that the net energy gains at Stevens Creek attributable to Clark Hill were for the periods indicated as follows:

Year	*Kilowatt-hours*
September–December 1950	98,000
1951	1,002,000
1952	(6,086,000)
1953	10,743,000
1954	29,863,000
1955	10,953,000
Total	46,573,000

Other Energy Gains

The studies, heretofore referred to, made by the Staff of conditions before and after the construction of Clark Hill included flow duration curves for the Augusta canal for October 1944–September 1950 and October 1950–September 1956. They showed no increase in the amount of water diverted into the City's canal after regulation was provided by the Clark Hill project. On the basis of those studies, the Staff concluded that there were no benefits to the City of Augusta and no increases in dependable capacity at the plants which utilized water from the City's canal during the period beginning with initial regulation of water at Clark Hill and ending December 31, 1955. No other evidence on the subject was offered at the hearing. However, the Company contends that the Staff's was only the most perfunctory examination and quotes from the 1944 report to the Congress of the Corps of Engineers (H.D. No. 657, 78th Congress, 2nd Session) in which it was estimated that the City's gross annual income from the sale of water from the City's canal would increase by about $10,000 annually due to "reregulation" by the Stevens Creek plant of the flow from Clark Hill. However, the Staff's studies, the results of which were presented by a witness in this proceeding, are more persuasive than the unexplained 1944 estimate of the Corps of Engineers.

It is concluded that for purposes of this determination the benefits derived from the Clark Hill project are confined to the Clark Hill and Stevens Creek projects.

Incremental Downstream Project Costs Associated With Power Gains

In order to determine the benefits, if any, which might accrue to the downstream project from power gains, it is necessary to determine the net monetary value attributable thereto. First, there must be determined the incremental cost, if any, to the downstream project, or projects, associated with those power gains.

The estimate of incremental downstream project costs associated with power gains is limited to the estimated incremental costs of producing the energy gains at Stevens Creek because, as will be seen, the only power gains realized were energy gains at Stevens Creek. It seems to be agreed that incremental

[9] Committee Print No. 13, 86th Congress, 2nd session.

costs are those costs incurred by the Company which were attributable to and directly proportional to increases in generation at the Stevens Creek plant. The Staff assumed that the additional energy available at Stevens Creek attributable to the storage and regulation of the Clark Hill project would displace equivalent energy, which, if not available at the Stevens Creek plant, would need to be produced elsewhere among the steam-electric generating facilities of the Company. In making this determination, the Staff witness first estimated the incremental cost of generation at Stevens Creek. He considered the incremental cost of generation to be that part of the production expenses which is dependent upon the amount of energy generated. The production expenses as reported in Federal Power Commission Form No. 1 comprise operation costs and maintenance costs.

Stevens Creek Operation and Maintenance Costs

Operation and maintenance costs of the Stevens Creek plant as reported in Form No. 1 were analyzed to determine the incremental components of such costs which were associated with the amount of electric energy generation. It was considered that substantially all of these costs were fixed and not related to generation except those attributable to maintenance of generating and electric equipment. Those costs, together with a prorated portion of costs attributable to maintenance supervision and engineering, were considered substantially incremental. It was concluded, therefore, that costs attributable to maintenance of generating and electric equipment plus a prorated portion of costs attributable to maintenance supervision and engineering represented the incremental component of the total operation and maintenance costs.

The Company operates other hydroelectric plants in addition to Stevens Creek. In order to get separate figures for the Stevens Creek plant it was necessary to subtract from the total the costs reported individually for the other plants. The following tabulation reflects the incremental costs of generation at Stevens Creek as so derived by the Staff.

Year	Net generation kilowatt-hours	Account 722 with prorated supervision and engineering	
		Amount	Mills per kilowatt-hours
1950	65,136,500	$7,548	0.116
1951	81,728,300	12,069	.148
1952	74,784,100	37,817	.506
1953	94,126,300	13,900	.148
1954	91,645,800	11,295	.123
1955	74,712,000	13,488	.181

The Company submitted a tabulation entitled "Value to South Carolina Electric and Gas Company of Energy Gains at the Stevens Creek Plant," the purpose of which was to show the value to the Company of the energy gains at Stevens Creek attributable to storage operations at Clark Hill. The Company does not deny that the incremental value to the Company in mills per kilowatt-hour of energy gains at Stevens Creek is the difference between the incremental cost of producing the energy at the Company's steam-electric plants and the incremental cost of producing the energy at the Stevens Creek hydroelectric plant.

Its evidence is designed to show, however, that: "The energy gains at Stevens Creek were in such small amounts as compared to the steam-electric generation that the incremental component of operation and maintenance expenses would

be a negligible amount. Also, because of the cycle maintenance program of the Company, it was decided that the incremental operation and maintenance charge should be the same each year. Therefore, the Company used .08 mills per kilowatt-hour, which is the amount used in emergency service and interchange contracts with other companies." This figure represents 30 percent of the average maintenance cost of the Stevens Creek plant for a period of 11 years, 1949 through 1959.

While the witness for the Secretary concurred in the principles of determination adhered to by the Staff in arriving at net monetary evaluation of the energy gains at Stevens Creek, he felt that it had deviated from those principles in the determination of incremental transmission costs.

Transmission Costs

Transmission costs and losses are items which must be considered in any power value estimates or determinations. The difference between the higher costs associated with the energy gains at Stevens Creek and the lower costs which would have been incurred if equivalent energy had been generated in system steam-electric plants represents the incremental transmission cost which should be deducted from the value of the energy gains at Stevens Creek. A study was made by the Staff of the costs of transmission, including losses, associated with the energy gains at Stevens Creek, which, according to the Staff, is relatively distant from the Company's load centers, and of the comparative costs if the equalent energy had been generated in system steam-electric plants.

A factor to be considered in this determination is the relatively small size of the Stevens Creek plant. The Staff concluded that 25 percent of the operation and maintenance cost of the Stevens Creek plant would be representative of the additional cost of marketing the increased energy. These computations showed varying amounts from year to year for transmission but were found to be close to 0.2 mills per kilowatt-hour. Accordingly, this figure was adopted as the cost attributable to transmission and this amount was added to the incremental operation and maintenance cost to obtain the total costs associated with the added energy available from the Stevens Creek plant.

The evidence adduced by the Company does not reveal incremental costs in mills per kilowatt-hour. It does reflect, however, transmission losses and other data from which transmission costs in mills may be derived. They are as follows:

Year	Mills/kilowatt-hour	Year	Mills/kilowatt-hour
1950	0.290	1953	0.251
1951	.270	1954	.218
1952	.262	1955	.186

As has been noted the Secretary's witness approved of the method employed by the Staff in the determination of the net monetary evaluation of the energy gains at Stevens Creek other than incremental transmission costs. However, the Secretary's witness said the figure used by the Staff was a gross figure related to Stevens Creek and was not a net-differential figure such as it should have been. And, he expressed the opinion, "based on a study of the Staff transmission study and the record of this proceeding that there is no incremental transmission facility-use cost involved in this determination." He concluded that the net monetary value of the Stevens Creek energy gains should not be adjusted in any way due to energy transmission considerations. On cross-examination the witness testified that the only thing that is involved in the

facility-use cost is whether or not the Company was required to make additional out-of-pocket expenditures for transmission plant or additional operation and maintenance costs for their transmission system; that he found no evidence that they had such additional costs just as a result of these additional gains at the Stevens Creek project. However, this witness admitted that he had made no independent studies to determine the incremental costs associated with energy gains at Stevens Creek, but had examined the methods used by the Staff in this connection. He had assumed, it appears, that increased generation from Stevens Creek would be accompanied by a decrease in generation at the Company's Urquhart steam plant, located as is the Stevens Creek plant in the western part of the Company's system.

The Staff, on the other hand, had assumed that during peak conditions Urquhart would be fully loaded and that, therefore, increased generation at Stevens Creek would replace generation in the less efficient steam plants in the eastern part of its system where most of the Company's load is.

The Staff's evidence and argument on this point are persuasive. There should, therefore, be deducted from the value of the energy gains at Stevens Creek incremental transmission costs as proposed by the Staff, namely 0.2 mills per kilowatt-hour.

Total Stevens Creek Incremental Costs

Combining the Stevens Creek incremental operation and maintenance costs and the incremental transmission costs determined by the Staff and the Company respectively, the result would be as follows:

Year	Staff	Company witness
	Mills per kilowatt-hour	
1950	0.316	0.340
1951	.348	.350
1952	.706	.332
1953	.348	.331
1954	.323	.298
1955	.381	.266

It will be noted that although the Staff estimated higher incremental operation and maintenance costs and lower incremental transmission costs than did the Company witness, these differences substantially balanced out in the aggregate figures.

Net Monetary Value of Power Gains at Downstream Projects

Since the Staff concluded that the only power gains at downstream projects attributable to Clark Hill are the energy gains at Stevens Creek the estimated net monetary value of power gains is limited thereto.

The Staff's theory in this study was that if the energy gains heretofore found to have been developed at Stevens Creek had not been available to that plant, an equivalent amount of energy would have had to be produced at the Company's steam-electric plants. The net monetary value of the energy gains at Stevens Creek was considered then to be the difference between the higher incremental cost of producing the steam-electric energy and the lesser incremental cost of generating the equivalent amount of energy at Stevens Creek including the incremental costs of transmitting the energy so gained to the market. During the period here involved the Company operated three steam-electric plants and, in addition, there was available to the Company a

portion of the output of the Urquhart steam-electric station operated by the Company's subsidiary, South Carolina Generating Company. The Urquhart plant was placed in operation in 1953 and the Staff considered the portion of its capacity available to the Company thereform to be the same as the Company's own generating capacity.

The Staff's testimony is that an extensive study would be required to determine which steam-electric plant at any particular time would have been the most likely source of equivalent generation if the energy gained at Stevens Creek had not become available. Each of the plants would have been the most likely source at various times during the period under investigation. Accordingly, the Staff used the average incremental cost of all steam-electric generation to evaluate the energy gains.

The production expenses (operation and maintenance costs) of the Company's three steam-electric plants were taken from its annual reports to this Commission, and the details on production expenses and net generation of the Urquhart plant and the amounts allocated to the Company were furnished by the Company with a letter dated June 12, 1957. The Staff witness analyzed the production expenses of the Company's steam-electric plants on a basis comparable to the analysis which was made of the production expenses of the Stevens Creek hydro plant set out above.

Except for the cost of maintenance of boiler equipment and maintenance of generating and electric equipment, substantially all of the production expenses of the steam-electric plants other than fuel were considered fixed costs. Those costs which are not fixed, together with a prorated portion of the costs of maintenance supervision and engineering, were considered the incremental component of the total steam-electric plant operation and maintenance cost, exclusive of fuel.

The fuel burned in each steam-electric plant was divided between fixed and variable components. The Staff witness estimated the incremental component of the cost of fuel to be 90 percent of the total fuel costs reported. However, he first excluded the cost of steam transferred, a credit item. The following tabulation shows, for the years 1950 through 1955, the net generation of steam-electric energy and the production expenses and fuel costs referred to above.

Year	Incremental costs of steam-electric energy		
	Net generation	90 percent of account 703 plus accounts 708 and 709 with prorated supervision and engineering	
	1,000 kilowatt-hours	Amount	Mills per kilowatt-hour
1950	736,225	$3,768,369	5.119
1951	927,383	4,916,287	5.301
1952	1,100,912	5,245,044	4.764
1953	1,084,610	5,002,171	4.612
1954	1,302,191	5,083,217	3.904
1955	1,541,949	5,756,487	3.733

The following amounts constitute the unit net monetary value of energy gains which represent the difference between the incremental cost of steam-electric energy last above set out and the Staff's estimate of total incremental cost associated with energy gains at Stevens Creek described earlier.

Net monetary value of energy gains

[Mills per kilowatt-hour]

1950	1951	1952	1953	1954	1955
4.803	4.953	4.058	4.264	3.581	3.352

Applying the unit net monetary value of the energy gains as so determined to the energy gains which have been determined as set out above, the net monetary value of the energy gains at Stevens Creek is arrived at as follows:

Period	Energy gain	Net monetary value	
	Kilowatt-hour	*Mills per kilowatt-hour*	*Dollars*
Sept. 1–Dec. 31, 1950	98,000	4.803	471
1951	1,002,000	4.953	4,963
1952	(6,066,000)	4.058	(24,697)
Jan. 1–Oct. 11, 1953	4,517,542	4.264	19,263
Total, Sept. 1, 1950–Oct. 11, 1953			Zero
Oct. 12–Dec. 31, 1953	6,225,458	4.264	26,545
1954	29,863,000	3.581	106,939
1955	10,953,000	3.352	36,714
Total, Oct. 12, 1953–Dec. 31, 1955	47,041,458		170,198

The values in the foregoing table are totaled separately for two periods, namely, (1) September 1, 1950, through October 11, 1953, and (2) October 12, 1953, through December 31, 1955. The storing of water in the Clark Hill reservoir during the initial filling of the reservoir resulted, the Staff witness said, in a decrease in generation at Stevens Creek. The period September 1, 1950, through October 11, 1953, covered the time during which generation at Stevens Creek was reduced due to initial filling of the Clark Hill reservoir, plus the time required for the value of subsequent energy gains at Stevens Creek to offset the value of such reduced generation. The Staff witness concluded that at the end of October 11, 1953, the value of filling losses had been offset by the value of the subsequent energy gains. Therefore, he adopted the next day, October 12, 1953, as the beginning of the period for which headwater benefit payments should be determined.

The Company in its brief concedes that there is substantially little difference between the Company's and Staff's valuation of the energy gains, a matter of 0.175 mills per kilowatt-hour. The similarity between the results of the valuation methods employed becomes apparent when the Company's unit values are applied to the above determination of net energy gains. The resulting total net value for the period under consideration would amount to $162,057, compared with the Staff's estimate of $170,198. The principal differences between the Company and the Staff estimates are two and, the Company concedes, they tend to cancel each other out.

The Secretary's determination of the net monetary value of energy gains differs from the Staff's in two particulars: The quantities of energy used by the Secretary do not reflect a deduction for evaporation from the Clark Hill reservoir, and no incremental transmission cost is allowed on energy gains at Stevens Creek. Thus, assuming that it is not proper (1) to offset power gains in one year with power losses in another, (2) to allow evaporation loss from the Clark Hill reservoir, and (3) to allow an incremental transmission loss, the energy

gains, the unit monetary value and the net monetary value of energy gains as determined by the Secretary for the periods indicated are as follows:

Period	Net value of energy gains		
	Energy gain	Unit monetary value	Net monetary value
	Kilowatt-hour	*Mills per kilowatt-hour*	*Dollars*
1950	100,000	5.003	500
1951	1,020,000	5.153	5,256
1952	(5,710,000)	4.258	(24,313)
1953	11,490,000	4.464	51,291
1954	30,580,000	3.781	115,623
1955	11,530,000	3.552	40,955

The Secretary contends further, however, that the Staff erred in not recommending charges for benefits in the years 1950 and 1951 and through October 11, 1953. During the year 1952 water was being impounded in the Clark Hill reservoir and there was, thus, lesser generation at Stevens Creek by reason thereof. The Secretary contends that the energy losses then sustained were offset against both prior and subsequent gains. The United States, the Secretary contends, earned a payment in 1950 and in 1951. In 1952 the Clark Hill project did not benefit Stevens Creek and earned no payment. But neither did it incur a liability therefor. In support of the latter position the Secretary cites *U.S.* v. *Grand River Dam Authority*, 363 U.S. 229, 4 L. Ed 2d, 1186.

In that case the Authority, the owner of the upstream project, sought compensation from the Federal government, the owner of a downstream project, alleging a taking of its water power rights and its franchise to develop electric power and energy at the site of the Federal project. A 70-acre tract owned by the Respondent was condemned when the Government's Ft. Gibson project was built; flowage rights of Respondent's land were acquired; and payment was made for relocation of its transmission lines. Respondent claimed more. It demanded of the United States $10,000,000 for the "taking" of its water rights at Ft. Gibson and its franchise to develop electric power and energy at that site.

There it seemed to be clearly recognized that if the stream were a navigable water of the United States, the Government would not be liable for depriving another entrepreneur of the opportunity to utilize the flow of the water to produce power. The cases hold that "such an interest is not compensable because when the United States asserts its superior authority under the Commerce Clause to utilize or regulate the flow of the water of a navigable stream there is no 'taking' of 'property' in the sense of the Fifth Amendment because the United States has a superior navigation easement which precludes private ownership of the water or its flow."

There the court quoted with approval from one of its earlier decisions to the effect that:

> It is for Congress alone to decide whether a project, by itself or as part of a more comprehensive scheme will have such a beneficial effect on the arteries of interstate commerce as to warrant it. That determination is legislative in character.

Under the doctrine there expounded, it seems clear that the Company has no constitutional right to compensation by reason of any benefits which might or might not have accrued to Clark Hill by reason of reregulation of the flow from the upstream plant to the downstream plant, as discussed later herein.

However, with respect to benefits which might have accrued to the downstream project by reason of the upstream project there is not involved, so far as can be seen, any constitutional question. We are concerned here merely with the Congressional intent in the enactment of the provisions of Section 10(f) of the Act. Nothing in the legislative history of these provisions brings one to the belief that it was the Congressional intent to base the assessment for annual charges upon the gross benefits received by the downstream from the upstream project.

The Secretary contends further, however, that Section 10(f) quite specifically requires that the determination contemplated be made upon an annual basis, year by year, each year to be considered separately and as a unit. In each of the years 1950 and 1951 there were excesses of positive energy gains over negative energy gains resulting in each instance in a net positive benefit to Stevens Creek. In 1952, however, the negative exceeded the positive benefits so that the net benefits were negative. The question is, then, whether the United States should credit the excess negative benefits in that year against positive benefits in one or more of the years in which there were net positive benefits. It is believed that in this respect the Secretary's interpretation of Section 10(f) is the correct one and that for the year 1952 there should be reflected no gain or loss in benefits.

However, the policy of the Commission with respect to the treatment of circumstances similar to those at bar was clearly indicated in the order issued on October 4, 1956, in *Arkansas Power & Light Company*, 16 FPC 1009. There the Commission said:

> It is appropriate that losses sustained at project No. 271 caused by the initial filling of the Blakely Mountain reservoir be offset against benefits subsequently received by project No. 271 from the Blakely Mountain headwater improvement.

While it is true, as pointed out in the Secretary's reply brief, that the order of October 4, 1956, was not a final one, this appears to be a technical criticism and there is no basis for the belief that in a final order the Commission would alter its position.

It is concluded, therefore, that the Staff's determination of the net monetary value of the energy gains at Stevens Creek attributable to Clark Hill, amounting to a total of $170,198 for the period under consideration, is fair and equitable and should be employed for the purposes of the determination herein required.

Increased Dependable Capacity, If Any, at Downstream Projects Attributable to Clark Hill

Dependable Capacity Without Clark Hill

The dependable capacity of a generating plant is defined in the Federal Power Commission Form No. 12 as "the load-carrying ability for the time interval and period specified when related to the characteristics of the load to be supplied." The evidence here is that usually the dependable capacity of a hydroelectric plant is its load-carrying ability at the time of annual system peak load assuming a recurrence of the most adverse stream flow conditions of record. The dependable capacity gain or loss at a downstream plant attributed by the Staff to a headwater improvement is the difference between what the dependable capacity of the plant is with the headwater improvement in operation and what it would have been without the headwater improvement.

Among the conditions attached to the approval dated June 23, 1910, and the subsequent articles of approval of the Company's permit referred to at page 633 *supra*

was one prohibiting the storing of water at the Stevens Creek project under certain named circumstances as follows:

> 5. That the waste weir gates shall be so operated, in connection with the flow of water over the dam or past the wheels, as to permit the free, regular, and unobstructed passage of all water which naturally flows down the river at any stage thereof below the stage of 8½ feet on the Augusta gauge, and, to accomplish this, said company is forbidden to accumulate or store up any water in their pond when the Augusta gauge reads less than 8½ feet; and, to enable this to be readily determined, they shall provide and maintain an accurate water gauge in their pond, which can be easily and accurately read to one-tenth of an inch, and if this gauge, at any time, begins to rise while the reading on the Augusta gauge is less than 8½ feet, then the waste weir gates shall be opened to an extent sufficient to check the tendency to rise and hold the level where it was.

A report by the Acting Chief of Engineers on revision of the permit for the construction of the Stevens Creek development, dated January 8, 1936, approved by the Secretary of War of January 10, 1936, recited that:

> Upon the completion of the New Savannah Bluff Lock and Dam, 13 miles below Augusta, Georgia in the latter part of 1936, the pool formed will give a minimum gauge reading of 12.0 on the Augusta city gauge. At the time the 8½ foot stage was selected, the corresponding discharge was 6,550 second feet. As the stage-discharge relation at Augusta will be destroyed by the pool of the New Savannah Bluff dam, the recording gauge now being maintained at this point will be moved down stream at a point just below the New Savannah Bluff Lock and Dam. Since the tributary discharge between Augusta and New Savannah Bluff is very small when the river is discharging 6,550 second feet at Augusta, no material variance in operation of the Stevens Creek development would be caused by measuring the discharge at New Savannah Bluff rather than at Augusta.

Accordingly, the Chief of Engineers recommended and the Secretary of War approved, a modification to Condition No. 5 in which a discharge of 6,550 cubic feet per second at New Savannah Bluff replaced the reading of 8½ feet on the Augusta gauge.

In their studies the Staff reviewed the stream flow records for the Savannah River at Augusta, Georgia together with additional records of discharge shown in the Chief of Engineers' reports to the Congress. Such review disclosed that the Augusta gauging station had been moved at various times. Prior to October 1, 1936, the station was within the City of Augusta where the drainage area was reported at 7,245 square miles. After that date the station had been approximately 12 miles downstream from Augusta at the location of the New Savannah Bluff Lock and Dam. The drainage area at the downstream station was reported as 7,508 square miles.

The Staff's review of the stream flow records also disclosed that flows at New Savannah Bluff during periods of adverse stream flow are substantially less than 6,550 cubic feet per second. The Staff concluded that compliance with the condition in the permit above quoted restricts the use of Stevens Creek as a peak-load plant during periods of adverse stream flow.

In annual power system statement forms (FPC Form 12) filed with this Commission for the years 1940 through 1954, the Company reported that the Stevens Creek plant was operated as a run-of-river plant. This form defines a "run-of-river" plant as a plant whose operation cannot be regulated over a period of more than a few hours, either from storage at site or above, but whose operation is, in general, controlled by the volume of flow which must be utilized as it occurs

or be wasted.[10] The Staff assumed that during periods of adverse stream flow the plant would be operated most advantageously to the Company which would result in a full power pool during those periods.

The Company's annual power statement report to the Commission for the year 1955 showed the effective net head of the Stevens Creek plant with full pond and full station load as 29 feet, a water use of 0.56 cubic feet per second per kilowatt for full station load and a head of 28 feet. This is equivalent to an efficiency of 75 percent. The Staff concluded that the dependable capacity of Stevens Creek without Clark Hill should be based on the assumption that the power pool would be full at the time of annual system load, that the head would be 29 feet, and that the plant efficiency would be 75 percent.

During the period 1939 through 1955 the annual peak load of the Company occurred in December of each year. During this period the actual 60-minute demand on the Stevens Creek plant at the time of annual peak load ranged from a minimum of 5,000 kilowatts in 1939 and 1940 to a maximum of 18,000 kilowatts in 1947.

The Company's 1955 Form 12 report to the Commission shows the net plant capability of Stevens Creek under the most adverse operating conditions to be 3,500 kilowatts, with the limitation being reported as low water. This, incidentally, is the estimated prime power of the Stevens Creek plant as of December 12, 1938, based on data furnished by the Company to the Corps of Engineers, as it appears on page 31 in Senate Document No. 66, 76th Congress, 1st Session.

The minimum daily December flow of record prior to Clark Hill was 1,790 cubic feet per second, measured at Augusta, on December 2, 1931. This flow adjusted to the Stevens Creek site by ratio of respective drainage areas of 7,245 and 7,173 square miles respectively, would produce 3,266 kilowatts of power at Stevens Creek.

The minimum daily flow on a day of annual system peak load prior to regulation by the Clark Hill reservoir occurred on December 18, 1939, when the flow was 2,840 cubic feet per second at the Butler Creek gauge below Augusta, drainage area 7,508 square miles. This flow adjusted to the Stevens Creek site by the ratio of drainage areas of 7,508 and 7,173 square miles, respectively, would produce 5,000 kilowatts of capacity at Stevens Creek. The demand on the Stevens Creek plant at the time of annual system peak load on December 18, 1939, was 5,000 kilowatts.

A serious drought occurred in the Savannah River basin during 1954 and 1955 but at that time the recorded flows at the Butler Creek gauge reflected the regulation at Clark Hill. Therefore, the only way of determining natural flows below Clark Hill was by adjusting recorded flows to correct for changes in storage in the Clark Hill reservoir. The computed natural flow at Clark Hill for December 1955 was 2,472 cubic feet per second. This flow adjusted to the Stevens Creek site would produce 5,320 kilowatts of power at Stevens Creek.

A comparison of average monthly December flows at Augusta in adverse flow years, utilizing the change in contents of the Clark Hill reservoir in equivalent cubic feet per second, disclosed that the average monthly flow at the Butler Creek gauge adjusted for change in storage in the Clark Hill reservoir was 4,336 cubic feet per second in December of 1954 and 2,690 cubic feet per second in December 1955. In contrast, an average monthly flow of 4,304 cubic feet

[10] In its brief the Company explains away the apparent significance of this classification. It appears that Stevens Creek does not fit either the definition of a "run-of-river" or a "storage" plant but is closer to the concept of run-of-river.

per second occurred in December 1939, the month in which a flow of 2,840 cubic feet per second occurred on the day of annual system peak load. It appeared to the Staff that a new most adverse stream flow period had occurred in December 1955, but that such adverse period flow would be a factor in determining dependable capacity only in future years. On that basis, the Staff concluded that the dependable capacity of the Stevens Creek plant without Clark Hill was approximately 5,000 kilowatts.

With respect to the dependable capacity of the Stevens Creek plant in the absence of Clark Hill, the Company contends that there are two separate and distinct aspects to the question. One is, what are the precise limitations on operations at Stevens Creek imposed by the terms of Special Condition No. 5 of the War Department permit? The second is, within these limitations what was the dependable capacity realizable by the Company at Stevens Creek before Clark Hill when the operation of the Stevens Creek plant was integrated with the Company's other resources so as to maximize the firm load-carrying capacity of the Company's resources?

As has been noted, on October 1, 1936, the Augusta gauge was abandoned and a station established 12 miles downstream at New Savannah Bluff. This appears to be the reason for the change in Special Condition No. 5 noted above. It seems equally clear, however, that no material variation in operation of the Stevens Creek development was intended to be caused by measuring the discharge at New Savannah Bluff rather than at Augusta. Nevertheless, the evidence shows that the Company's predecessor in interest at once raised a question as to whether a stage of 8½ feet at Augusta was the equivalent of 6,550 second feet of flow at New Savannah Bluff. During the period 1928–1930 flow measurements were made which seemed to indicate that the stream flow equivalent of an 8½ foot stage at Augusta varied from a low of 4,700 second feet to 5,800 second feet with an average of about 5,100 second feet. The testimony is that the Stevens Creek plant was operated on the basis of an average of about 5,000 second feet from March 1936 until early in 1953 when the Clark Hill project went into operation, all without objection from the Corps of Engineers or anyone else.

The Staff's determination of the dependable capacity at Stevens Creek before Clark Hill is based, the Company asserts, upon the assumption that the provisions of Special Condition No. 5 would prevent the release of water from storage at times of flow below approximately 6,550 cubic feet per second at New Savannah Bluff. As pointed out in the Company's brief, there is no such limitation upon the *release* of water but only upon the *storing* of water during such low water periods. The Company's evidence indicates that prior to the closure of Clark Hill dam, Stevens Creek was operated as necessary for peaking, and did not operate entirely as a run-of-river plant. The Company submitted data relating to Stevens Creek generation on the day of overall system peak for each of the peak years 1942, 1943, 1949 and 1951, namely, December 16, December 15, December 12 and January 30, respectively. These four days were selected "as examples of how the Stevens Creek plant was regularly operated prior to the closure of the Clark Hill dam." In each instance the forebay elevation was reduced immediately after the hour in which maximum generation was achieved for the day. Thus, it appears that the plant was peaked during the peak hours by employing storage.

Another Company exhibit (Exh. No. 9) shows the shape of the annual load actually experienced during 1955. The top 18 megawatts of the Company's system load was shown as carried by Stevens Creek. Such an on-peak operation would require 207,000 kilowatt-hours per year.

The Staff's study (Exhibit 3) had shown that Stevens Creek provides 12,600 acre-feet of storage. This is the equivalent of about 225,00 kilowatt-hours. Under these conditions, the Company points out, Stevens Creek could carry the top 18 megawatts of the system load with no inflow and without utilizing all of the storage.

The Company's exhibit last above referred to also shows the shape of the Company's load during the peak month. On-peak operation of the Stevens Creek plant at 18 megawatts would require 125,000 kilowatt-hours over a period of 15 hours. The minimum daily flow of record during the peak month (December) was 1,790 cubic feet per second at Augusta. Adjusted for drainage area differences, the minimum flow is approximately 1,770 cubic feet per second at Stevens Creek. This is equivalent to generation of 2,970 kilowatts at Stevens Creek. Therefore, should the natural inflow be at a minimum during each of these 15 peak hours the energy from natural flows would amount to 44,000 kilowatt-hours. Since as has been seen, the total on-peak generation required of Stevens Creek is 125,000 kilowatt-hours, peaking operations would require drawing 81,000 kilowatt-hours from storage.

Thus, the Company undertook to show that Stevens Creek had a dependable capacity of 18,000 kilowatts in the load shape of South Carolina Electric & Gas Company loads before Stevens Creek was called upon to reregulate Clark Hill discharges in the interests of navigation.

The Staff contends, however, that despite the fact that it would be theoretically possible to operate the Stevens Creek reservoir and plant to achieve the 18,000 kilowatts capacity in the load shape assumed by the Company, to do so on an actually dependable basis would require an insight into the future quite impracticable of achievement. Furthermore, the load factors assigned to Stevens Creek in the Company's load are only 0.93 percent for the peak month and 0.13 percent on an annual basis. Under such circumstances, the Staff insists, the Company's Saluda hydroelectric plant, rather than its Stevens Creek plant, would be assigned to the top of the system load.

In March 1953 representatives of the Company and the Corps of Engineers entered into negotiations concerning coordinated operation of the Clark Hill and Stevens Creek projects and a revision of Special Condition No. 5. Beginning in April 1953 a trial period of operation was established whereby a minimum navigation flow of 5,300 cubic feet per second was to be maintained at the New Savannah Bluff Lock and Dam. Such operation was maintained until November 29, 1954, when the Savannah District Office of the Corps of Engineers, due to the serious drought in the area, set forth new minimum water release requirements at Stevens Creek ranging from 4,000 to 5,000 cubic feet per second. Subsequent to that date, the Savannah District Office furnished the Company by letter several new schedules of minimum water releases from Clark Hill and thereby fixed minimum required releases of water from Stevens Creek. Minimum releases as low as 3,400 cubic feet per second were prescribed for Stevens Creek for a part of January 1955.

Based upon the information contained in the letters setting up these water release requirements, the Staff concluded that the Stevens Creek project was being used to reregulate peak discharges from Clark Hill. Since there was thus the possibility that at the time of the Company's peak load the pool might be drawn down resulting in a reduction in both head and efficiency, the Staff assumed instead of a head of 29 feet and an efficiency of 75 percent, a head of 25 feet and an efficiency of 70 percent. Under this assumption of head and efficiency, the week day releases of 3,400 cubic feet per second would produce

5,042 kilowatts. It was evident to Staff's witness that the water release requirements were changed from time to time with little or no advance notice.

The Staff contends that as a consequence the Company could not rely for the period prior to December 31, 1955, on dependable capacity above the 5,000 kilowatts which the Staff found available without Clark Hill. The Staff concluded then that during the period 1950 through 1955 Clark Hill regulation neither increased nor decreased the dependable capacity of Stevens Creek.

In answer to Company counsel's question "* * * What is the dependable capacity of the Stevens Creek plan if Stevens Creek is used to reregulate Clark Hill discharges in the interest of navigation?", the Company's Manager of Engineering, Production and Transmission testified:

> In the years 1955 and 1954, when Stevens Creek was being used to reregulate the Clark Hill discharge, only 8,000 kilowatts were generated at Stevens Creek at the time of the system peak. As a matter of fact, at the time of the system peak, performance of the reregulating function necessitated storing water in the Stevens Creek pond.

However, for purposes of this proceeding the Company prefers to adopt the Staff's determination of a dependable capacity of 5,000 kilowatts after Clark Hill.

Thus, the Company's testimony is that performance of the reregulating function causes the Company to sustain a loss of 13,000 kilowatts of dependable capacity at the Stevens Creek plant. Current company costs of $20.25 per kilowatt per year applied to that amount would result in a total of $263,250 of annual capacity damage, a total of $576,950 for the period October 23, 1953 [11] through December 31, 1955.

The Secretary also offered evidence as to the dependable capacity of Stevens Creek. The Secretary's witness testified that with respect to the dependable capacity of Stevens Creek, both with and without Clark Hill, the Staff's witness had erred in several particulars. The latter had made, the Secretary's witness insists, the basic assumption that Stevens Creek without Clark Hill is dependent upon the natural stream flow at the time without any use of stored water, and with respect to the condition with Clark he has assumed that the water available is the average release required at Stevens Creek. Thus, in neither case, the Secretary's witness said, did the Staff witness assume that flows could be peaked for the purpose of greater generation on the peak load.

Dependable capacity, the Secretary's witness testified, is determined on the basis of the most adverse conditions that may occur at the time the annual peak may be expected to occur. He pointed out that in determining dependable capacity at Stevens Creek without Clark Hill the Staff witness had used the flow of a day on which the Company system peak actually occurred.

A study of the records revealed a constant pattern with respect to the season in which the peak might be expected to occur; from this, the Secretary's witness said, it appeared reasonable to assume that the peak might occur on any day between December 5 and December 23. The lowest flow which had occurred during this period was 2,010 cubic feet per second measured at Augusta, which occurred on December 6, 1925.

The Secretary's witness also disagreed with the Staff's use of a head of 29 feet. He used instead a head of 27.9 feet. Employing a flow of 2.010 cubic feet per second a head of 27.9 feet and a 75 percent efficiency (that used by the Staff), the Secretary's witness arrived at a dependable capacity of 3.560 kilo-

[11] If October 12, 1953, which the Staff employed as the beginning of the period, were used the total capacity loss claimed by the Company would be materially increased.

watts for Stevens Creek under natural conditions and without Clark Hill. In his brief, the Secretary points to the Company's pre-Clark Hill reports to the Commission in which the Stevens Creek net plant capability was given as 3,500 kilowatts with the limitation placed on this capacity as "low water."

On cross-examination the Secretary's witness conceded that during the period 1939 through 1955 all of the Company's system peaks occurred after December 6, the earliest December 7. He testified, too, that he did not believe that the actual system peak had occurred on the day of most adverse flow.

The Staff contends that the assumptions made by the Secretary's witness sets upon a contingency not contemplated in the Commission's definition of dependable capacity.

For the condition with Clark Hill, the evidence shows that in December 1954 the low flow was 4,200 cubic feet per second. The Secretary's witness condemns the use by the Staff of a flow of 3,400 cubic feet per second, which was the low flow in January 1955, to establish the dependable capacity on an annual peak load which came in December 1954 on the grounds, given by the Staff, that the flow after Clark Hill was subject to the control of man and, therefore, less dependable. That the flows were reduced below 4,200 cubic feet per second in January 1955 by the action of man, did not, the Secretary's witness said, alter the fact that a drought condition worse than had ever before been experienced made the reduction necessary. Under such circumstances, the witness found no basis for using a flow other than that experienced. However, the flow for December 1954 would apply only to subsequent years.

The Secretary's witness testified too that the lowest head which had occurred during the period when the Company's peak should have been expected to occur was 27 feet and that this head should have been used. He said that the design head for units at Stevens Creek was 27 feet; that units normally have their greatest efficiency at or near the design head; that he saw no occasion (or basis) for using a difference in efficiencies; that if 75 percent efficiency is appropriate in the case without Clark Hill it should be appropriate in the case with Clark Hill.

Based on a flow of 4,200 cubic feet per second in December 1954, a head of 27 feet and an efficiency of 75 percent the dependable capacity for 1955 is 7,200 kilowatts. Since the low flows of 1954 established new critical flows, the capacity through 1954 would be based on 5,100 cubic feet per second which would correspond to 5,300 cubic feet per second below Augusta. This flow at a head of 27 feet and an efficiency of 75 percent would produce 8,740 kilowatts.

The Secretary's testimony is that assuming no peaking of releases at Stevens Creek either with or without Clark Hill, the increase in dependable capacity at Stevens Creek attributable to Clark Hill had been 5,180 kilowatts through 1954.

The Secretary disagreed, however, with the Staff theory that peaking of releases with Clark Hill in existence was not permissible. He pointed to the Corps of Engineers' letter of November 29, 1954, to show that quantities of water sufficient for peaking in many years could be stored on Saturday and Sunday and used for peaking during the subsequent five week days. These data showed that for the period November 28 to December 31, 1954, the minimum releases at Stevens Creek were 200 to 300 cubic feet per second lower on Saturdays and Sundays that the average releases for the week and the minimum week day releases. Thus, water could be stored over weekends for some week-day peaking. The Secretary contends that the water thus saved with 300 cubic feet per second difference in flows for weekends, the accumulated

pondage together with the base flow, would be sufficient for full load plant operation for 2½ hours per week. This would amount to about 10 hours per month and would be the equivalent of about 180,000 kilowatt-hours for peak load use.

Using the difference of 200 cubic feet per second for weekends, which went into effect in late 1954, the peaking energy would be about 120,000 kilowatt-hours, or essentially the same as the Company showed as needed for the 18,000 kilowatts of installation to be dependable on the system load during the peak month. The witness concluded (on the assumption that there was adequate reregulating capacity at New Savannah Bluff pond) that from a physical standpoint a peaking operation would not be inconsistent with the required navigation project.

He pointed out that the failure of the Company to schedule more than 8,000 kilowatts at the time of its annual system peaks in 1954 and 1955 was not due to the plant's inability to operate at a higher load but rather that no greater capacity from Stevens Creek was needed. He testified that in his opinion the dependable capacity of the Stevens Creek plant with Clark Hill is 18,000 kilowatts. This conclusion assumed the availability of sufficient pondage at New Savannah Bluff to perform this function. However, the Secretary's witness did not estimate the dependable capacity of the Stevens Creek plant on that assumption.

To summarize, the Staff concluded that there was neither a gain nor a loss in the capacity at Stevens Creek by reason of the construction and operation of the Clark Hill project, while the Company contends that there resulted a loss of some 13,000 kilowatts a year[12] and the Secretary insists that there was an increase in capacity of about 5,100 kilowatts a year.[13] Thus, the evidence respecting this particular issue is utterly irreconcilable. Taking into account all of the evidence presented thereon but more particularly the restrictions upon the use of water as contained in Condition No. 5 to the instrument of approval, the statements consistent therewith and in confirmation thereof appearing in the reports cited by the Staff, as contrasted with the data on overall system peak for the years 1942, 1943, 1949 and 1951 and the hypothetical load form exhibits presented by the Company, leads to the conclusion that the operation and maintenance of the Clark Hill project has not resulted in a loss of capacity at the Stevens Creek plant. Similarly, the evidence presented by the Secretary is not persuasive that there has been any gain in capacity at the Stevens Creek plant attributable to the construction and operation of the Clark Hill project.

Parenthetically, it is only fair to point out that in an attachment to the letter from the Commission's Regional Engineer in Atlanta dated September 16, 1954, to the Company entitled "Notes on Investigations in the Study on Headwater Benefits—Clark Hill," that it was said that:

> From this study [a hydraulic study made to determine if any change in the capacity output of Stevens Creek plant could be observed owing to the operation of Clark Hill reservoir] no evidence was produced to indicate that the capability or dependability of the [Stevens Creek] plant was affected.

In a later letter, dated November 22, 1957, the Regional Engineer said:

> * * * We estimate the load-carrying capacity at Stevens Creek to meet the system peak demand has been reduced about 11,000 kilowatts because of the require reregulation of the Clark Hill peak releases.

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[12] With a monetary value of about $263,250.

[13] With a monetary value of about $102,564.

There documents were offered in evidence by the Company but were rejected because the author thereof was not present for questioning with respect thereto.

It should be pointed out also that the same information as that appearing in the letter of November 22, 1957, appears at page 80 of the record of the hearings before the House Subcommittee on Interstate and Foreign Commerce in connection with H.R. 5309, 86th Congress, July 27, 1959.

Since it has been concluded that there was neither a gain nor loss in capacity at Stevens Creek because of the construction and operation of the Clark Hill project it is unnecessary to consider here the question posed by the Company as to whether the value of capacity losses must be offset against the value of energy gains.

Benefits to Upstream Plant from Reregulation

The Company further contends that because of the function of reregulation which it performs, there accrues to the Government's Clark Hill project benefits which also should be offset against any possible energy gains downstream.

In Senate document No. 66, 76th Congress, 1st Session, page 27, it is stated that:

> * * * It has been found that when the normal flow of the river is 5,000 second feet, the weekend ponding operations of the power companies above reduce depths from one to two feet during each Monday, Tuesday, and Wednesday * * *.
>
> * * * * * * *
>
> If the Clark Hill project were constructed and the flow reregulated at Stevens Creek, a value of 5,600 cubic feet per second or more would be available every day of the year, and a navigable depth of 7.5 feet would be continuously available. * * *

A number of reports made by the Corps of Engineers to the Congress prior to the authorization of the Clark Hill project recognized that to operate Clark Hill efficiently and yet maintain navigation downstream it would be necessary that the flow from that project be reregulated to accomplish this purpose. The alternatives in that respect available seem to have been (1) to persuade Stevens Creek's owners that net benefits would accrue to that plant from the coordinating effort, (2) for the Government to acquire the Stevens Creek plant and (3) for the Government to construct a reregulating dam downstream. The dollar value assigned by the Regional Engineer in the preliminary report heretofore referred to for the reregulating benefits accruing to Clark Hill was $79,500 a year, or a total of $238,500 for the years 1953, 1954 and 1955. These figures, the Regional Engineer points out, are based on the cost of a federally financed reregulating project.

The Company insists that the Government "* * could not compel the Company to operate Stevens Creek as a reregulating structure," that "the Corps of Engineers has long recognized that * * *," and in support of that contention cites from the document referred to above (Senate document No. 66, 76th Congress, 1st Session, p. 31) as follows:

> The Stevens Creek plant could perform this reregulation and at the same time receive extensive benefits to its firm power through the storage of the Clark Hill project, but it is *not believed that there is any existing legal authority to compel the Stevens Creek plant to operate in this manner.* It, therefore, seems essential that the Clark Hill project be constructed, operated, and maintained by the United States so that in arranging the terms of reimbursement by the Stevens Creek plant to the Clark Hill project for benefits from storage, the United States can include the necessary reregulation. [Emphasis supplied.]

The Company further quotes from a report of the National Resources Committee contained in the same Senate document (page 10) as follows:

> * * * Unless arrangements are made for the effective correlation of water releases at the existing Stevens Creek Dam with the releases from the proposed Clark Hill Dam, the benefits accruing to navigation downstream may be reduced. * * *
>
> The National Resources Committee has previously called attention to the desirability of advance agreement with the power company owning the site at Clark Hill Reservoir and the Stevens Creek plant which would be benefited by the construction of the project.* * *

Later in its brief it is asserted that:

> Adding the *minimum* positive benefit to the United States, discussed above, of $238,500 to the monetary value of the capacity loss (or negative benefit) to the Company set forth in Section VI of $576,950 the total offsetting figure for the period covered is $815,450. The greatest downstream benefit figure claimed by *any* party to the proceeding is that of the Interior of $213,625, which, as we have just pointed out above, makes no allowance for energy losses. The difference between these two amounts is $601,825 which is the minimum credit balance the Company is entitled to for the period covered no matter what basis is used. If the more accurate estimate of the Company is used such minimum credit becomes $797,656.
>
> * * * Until such credit balance in favor of the Company is offset by *positive* benefits no assessment may, as a matter of law, be made.

Since it has been concluded that the energy gains at Stevens Creek had a monetary value in the year 1954 of $106,939 and in the period October 12, 1953, through December 31, 1955, of $170,198 and there were no offsetting capacity losses suffered by that plant (from reregulation or otherwise) there here remains only the hypothetical question whether if the evidence established a money value of benefits to Clark Hill from the performance of the reregulating function at Stevens Creek such a value should be offset against the value of the energy gains to Stevens Creek.

It seems quite clear, however, that the determination required to be made by this Commission pursuant to Section 10(f) of the Federal Power Act is limited to the benefits which accrue to downstream projects from construction work undertaken by an upstream development. Consequently, no consideration can be accorded here to the benefits, if any, which might accrue to Clark Hill by reason of reregulation at Stevens Creek.

Costs of the Headwater Improvement Project

In order to determine the amounts of interest, maintenance and depreciation which is subject to equitable allocation to the downstream plant there must be determined the investment and other costs from which those elements arise and the annual charges to be apportioned. Although there appears to be no controversy with respect to these data, since this is the first proceeding of its kind to be determined on the basis of detailed evidence it is believed desirable to set it forth here with some particularity.

Investment Costs

The construction costs of the Clark Hill project, excluding interest during construction, were supplied to the Staff by the Office of the Chief of Engineers. Actual specific power costs as of July 1, 1955, were $27,981,489 and, excluding $52,000 pre-authorization expenditures, joint-use costs were $49,682,365. The cost of interest during construction was taken from a report prepared by the

Savannah District Office of the Corps of Engineers under date of December 1955 entitled "Cost Allocation Studies—Clark Hill Project." Interest during construction attributable to specific power there appeared as $1,039,751 and that attributable to joint-use facilities, $4,395,100. The total investment was thus found to be $83,098,705 of which $29,021,240 was the investment in specific power facilities and $54,077,465, the investment in joint-use facilities.

Specific power facilities are those which serve the purpose of power only,[14] while joint-use facilities are those which serve more than one of the purposes of a multi-purpose project. The dam and reservoir are the principal joint-use facilities. There are, at Clark Hill, no specific flood control or navigation facilities.

Allocation of Cost to Project Purposes

The "alternative justifiable expenditure" method was employed to allocate the joint-use costs between power and the other functions. This method was used instead of the "separable cost-remaining benefits" method because the necessary data to determine separable costs were not available. The method employed resulted in allocations to project purposes as follows: flood control—7.59 percent, navigation—8.06 percent, and power—a total of 84.35 percent. The Staff witness multiplied the construction cost of joint-use facilities, $49,682,365 by these percentages to obtain the construction cost allocated to each of the project purposes.

The allocated investment costs of the joint-use facilities were thus determined as:

Period	Joint	Specific	Total
Oct. 12-Dec. 31, 1953:			
Operation	$23,902	$23,926	$47,828
Maintenance	7,552	1,482	9,034
Transmission		1,214	1,214
Total	31,454	26,622	58,076
1954:			
Operation	153,285	121,743	275,028
Maintenance	39,750	3,962	70,712
Transmission		9,243	9,243
Total	193,035	161,948	354,983

The total investment cost allocated to power as of July 1, 1955, (specific power—$29,021,240 and joint-use allocated to power—$45,773,575) was thus found to be $74,794,815. This amount represents the total cost of the project associated with the provision of power benefits, both at site and downstream. Specific power facilities were considered beneficial to at-site power production only. Consequently, the downstream benefits attributable to Clark Hill are provided solely by the dam and reservoir, that is the joint-use facilities, which the Staff considered a single facility.

The Staff witness considered that the payments which should be made by downstream recipients of benefits should be an equitable part of the annual charges for interest, maintenance and depreciation on the Clark Hill joint-use facilities, namely, $54,077,465. The witness assumed that the three project purposes should share in the cost of joint-use facilities in accordance with the

[14] The powerhouse and generating equipment, penstocks, power intake gates and switchyard structures and equipment are the principal ones.

allocation of cost referred to above. This resulted in an allocation to power in the amount of $45,773,575 as representing the total cost of the headwater project associated with the provision of power benefits both at site and downstream. The witness concluded that the annual charges for interest, maintenance and depreciation on those costs should be apportioned between the headwater improvement project and the downstream beneficiary. The amount of the charges to be apportioned to the downstream beneficiary were determined by him by the respective power benefits which the Clark Hill dam and reservoir provided to the downstream Stevens Creek plant and to the at-site Clark Hill power plant.

Annual Operation and Maintenance Costs Charged to Power

Actual operation and maintenance costs of the Clark Hill project for the period July 1, 1953, through December 31, 1955, were obtained from the Corps of Engineers. These costs were also reported separately for specific power, joint-use facilities and for general expenses. In the reported costs of operation and maintenance, the items of supervision, engineering and general expenses were not apportioned to specific power and joint costs. The Staff, therefore, apportioned these annual costs in direct proportion to the actual reported specific power and joint-use power operation and maintenance costs. The operation and maintenance costs charged to power specifically and jointly were thus determined for the periods October 12 through December 31, 1953, and the years 1954 and 1955. Operation, maintenance and transmission costs charged to power were determined as follows:

Period	Joint	Specific	Total
1955:			
Operation	$124,795	$159,601	$284,396
Maintenance	44,915	50,170	95,085
Transmission		5,406	5,406
Total	169,710	215,177	384,887

Annual Fixed Charges on Power Investment

The Staff computed the annual fixed charges on the investment cost of the Clark Hill project allocated to power. These computations were made separately for investment in the specific power facilities, $29,021,240, and for the investment in joint-use facilities allocated to power, $45,773.575. The components of fixed charges are interest, depreciation, interim replacements, insurance and taxes. Annual charges for interest, depreciation and insurance were based upon the investment in the specific power and joint-use facilities, respectively allocated to power as set out above. An annual rate of 2.50 percent was used for interest, 1.026 percent for depreciation and 0.10 percent for insurance. The rate for depreciation was based upon a 50-year 2.50 percent sinking fund. The 0.10 percent for insurance is an estimate of the annual cost in lieu of actual insurance costs. There are no taxes on the Clark Hill project. An annual allowance of $71,000 for interim replacement costs of specific power facilities was taken from the Corps of Engineers' December 1955 Cost Allocation report.

Total annual fixed charges were not applicable during 1953 and 1954 before the total power installation of seven generating units was in operation. During this period the fixed charges on both joint-use facilities allocated to power and specific power facilities were proportioned on the basis of units in operation. The

annual fixed charges for the period October 12, 1953, through December 31, 1955, are summarized below:

Charges	Joint	Specific	Total
Oct. 12–Dec. 31, 1953:			
Interest	$136,157	$86,326	$222,483
Depreciation	55,879	35,428	91,307
Interim replacements		8,448	8,448
Insurance	5,588	3,543	9,131
Total	197,624	133,745	331,369
1954:			
Interest	967,873	613,649	1,581,522
Depreciation	397,216	251,841	649,057
Interim replacements		60,051	60,051
Insurance	39,722	25,184	64,906
Total	1,404,811	950,725	2,355,536
1955:			
Interest	1,144,339	725,531	1,869,870
Depreciation	469,637	297,758	767,395
Interim replacements		71,000	71,000
Insurance	46,964	29,776	76,740
Total	1,660,940	1,124,065	2,785,005

Combining the annual fixed charges so determined and the annual operation and maintenance costs arrived at as set out above, there result total annual power costs as follows:

Year	Joint	Specific	Total
1953 [1]	$229,078	$160,367	$389,445
1954	1,597,846	1,112,673	2,710,519
1955	1,830,650	1,339,242	3,169,892

[1] Oct. 12–Dec. 31, 1953 only.

Annual Charges To Be Apportioned

Totaling the previously derived annual charges for interest, maintenance and depreciation on joint-use facilities allocated to power results in the following:

Project purpose	Construction cost	Interest during construction	Investment
Flood control	$3,770,891	$208,200	$3,979,091
Navigation	4,004,399	320,400	4,324,799
Power	41,907,075	3,866,500	45,773,575
Total	49,682,365	4,395,100	54,077,465

Period	Interest	Maintenance	Depreciation	Total
Oct. 12–Dec. 31, 1953	$136,157	$7,552	$55,879	$199,588
1954	967,873	39,750	397,216	1,404,839
1955	1,144,339	44,915	469,637	1,658,891

Combining the above annual charges with the similar annual charges allocated to flood control and navigation results in the following total annual charges for interest, maintenance and depreciation on the Clark Hill dam and reservoir:

	Oct. 12–Dec. 31, 1953	1954	1955
Flood control	$31,343	$141,845	$144,221
Navigation	34,234	154,499	156,738
Power	199,588	1,404,839	1,658,891
Total	265,165	1,701,183	1,959,850

Consideration of the Assessment Formula

Having accumulated the data set out above it then became necessary for the Staff to devise a formula by means of which there could be determined the portion of the annual charges for interest, maintenance and depreciation on the upstream project which should equitably be borne by the owners of the downstream project. It appears that two approaches were considered, namely, "a value-of-service" approach and a "cost-of-service" approach. The method chosen by the staff is a value-of-service approach.

The Value of Service Approach

The formula [15] thus adopted contains three elements, namely (a) the net value of the downstream power benefits attributable to the upstream storage dam and reservoir, (b) the monetary value of the headwater improvement to at-site power production and (c) the annual power charges for interest, maintenance and depreciation on the headwater improvement.

Since the Clark Hill project is a multiple-purpose project, the dam and reservoir create flood control and navigation benefits in addition to power benefits. The Staff, in its study, allocated the investment in the upstream project to flood control, navigation and power by what was characterized as the "alternative justifiable expenditure" method. The formula employed by the Staff entails a further allocation of the costs of the dam and reservoir allocated to power as between at-site power production and downstream power production. Under this formula the net value of the energy gains at the downstream plant plus the monetary value of the headwater improvement to at-site power production is used as the basis for allocating the sum of the annual power charges for interest, maintenance and depreciation on the upstream project.

Employing the data heretofore herein set out in the formula just described, the Staff allocated the Clark Hill 10(f) costs, that is, interest, maintenance and depreciation to the downstream Stevens Creek plant for the periods indicated as follows:

Period	*Amount*
Oct. 12–Dec. 31, 1953	$20,726
1954	88,124
1955	32,615
Total	141,465

The Company contends that the formula employed by the Staff yields unreasonable results. A Company witness testified that the use of the sum of upstream *costs* and downstream *values* as the basis for allocating the reservoir costs referred to in Section 10(f) is not, from an engineering standpoint, a reasonable method of allocation. "Adding together," he said, "two sets of figures, one of

[15] The apportionment on annual charges on the headwater improvement to the downstream Stevens Creek plant equals $\frac{V_d}{V_d+V_m} X\ J$, where V_d equals the net value of energy gains at Stevens Creek, V_m equals the monetary value of the headwater improvement to at-site power production and J equals annual power charges for interest, maintenance and depreciation on the headwater improvement.

which reflects original cost and the other current value, gives merely an arithmetic sum of little or no significance. It is something like adding apples and oranges. Furthermore, use of this formula would lead to results that would become more and more unreasonable with time, should the inflationary spiral of recent years continue."

For the purpose of testing the engineering and mathematical soundness and reasonableness of the Staff's formula for the purposes for which it was used the Company witness made a number of analyses which he presented for the record.

The first revealed that for the year 1955 the amount allocated by the Staff's formula for headwater benefits assessments to Stevens Creek would be $32,615, or 88.8 percent of the Staff's estimate of net value of the energy gains at Stevens Creek attributable to Clark Hill. It also showed the results which would follow with an increase of 25 percent in the fuel-saver value of the increased generation at Stevens Creek after allowing for incremental costs of hydro generation and losses. On this assumption the headwater benefits assessment would be increased by 24.4 percent. Assuming a 100 percent increase in price levels the net value of the downstream benefits would increase by 100 percent, but the "10(f) costs" of the storage dam would increase only 2.7 percent. However, under the Staff's formula the headwater benefits payments would be increased 80.9 percent. The Company's witness testified that when the costs of the upstream project remain identical, and the value of the downstream benefits increase, the proportion of such benefits assessed decreases. As the value of the downstream benefits decrease, the amount that is assessed under the Staff's formula increases, percentage-wise. Consequently, as the value of the downstream benefits decreases an increasing portion is assessed to the point where a theoretical 100 percent might be assessed.

The Company submitted another study intended to show the effect on the assessment for downstream benefits of increases in operating expenses at Clark Hill. Although the net value of the energy gains at Stevens Creek and the Section 10(f) costs were to remain the same as those set out in the Staff's study, an increase of $100,000 in operating expenses at Clark Hill for 1955, to take the total joint power costs from $1,830,650 to $1,930,650, would reduce the assessment to the downstream plant under the Staff's formula by 5.1 percent.

In this exhibit also, the Company undertook to demonstrate the effects of private (rather than Federal) ownership of the upstream reservoir upon the assessment determined upon the Staff's formula. It revealed that under private financing the "10(f) costs" would be 77.8 percent greater than under Federal financing; but under the headwater benefits assessment formula proposed by the Staff, the assessment would be 30.3 percent less if the storage reservoir responsible for the downstream benefits were owned by a private company rather than by the Federal Government.

This result, the Company contends, demonstrates that the headwater benefits assessment formula employed by the Staff results in assessments which do not have a connection with the cost of providing the storage. The relationship is an "inverted" one in which for identical downstream benefits lower annual costs for storage results in a higher assessment. The result, the Company insists, is that the Staff uses as a basis a dollar figure that is found by adding values realized at the downstream plant and costs experienced at the upstream storage project. The net values realized downstream are current dollars whereas the costs of the upstream storage, which are largely fixed charges, of necessity reflect price levels at the time the upstream storage dam was originally constructed.

The Company contends further that the evidence described above graphically demonstrates that under the Staff's proposed formula an increase in the "value-of-service" results in a practically equal increase in the charge for the service although there has been no change in the cost of rendering the service; and that the use of the sum of upstream costs and downstream values as the basis of allocation produces the result that, for exactly the same physical situation and the same value for the downstream benefits, the headwater assessment would be less if the storage reservoir were built by an investor-owned utility with the consequent higher annual costs resulting from the higher cost of money and the obligation to pay taxes than would have been the case if such storage reservoir were a Federal project.

In support of the use of the cost-of-service approach, the Company contends that storage projects may perform a dual function. In addition to providing storage space to benefit downstream plants, such projects also create a head which is utilized only by the generating capacity *at the site*. Thus, dual-function projects, such as Clark Hill, perform both a storage function and a head function. In such cases, the Company witness said, he would first allocate the interest, maintenance and depreciation costs for the dam and reservoir between the "head function" and the "storage function."

In rebuttal, a Staff witness testified that the Clark Hill dam and reservoir is a single facility which provides flood control benefits, navigation benefits, and power benefits both to the at-site Clark Hill power plant and to the downstream Stevens Creek power plant. Therefore, it was not necessary to consider separately the dead storage capacity or the head function of the Clark Hill dam and reservoir. The annual power charges for interest, maintenance and depreciation on the Clark Hill dam and reservoir were apportioned by the Staff between the downstream Stevens Creek plant and the at-site Clark Hill plant in proportion to the power benefits which the headwater improvement provides to the owners of the two plants. At the downstream Stevens Creek plant the value of the benefits to the Company is determined on the basis of the estimated cost of obtaining equivalent power from the lowest cost alternative source. At the Clark Hill plant the value to the Government of the at-site power is determined on the basis that the value of power is equivalent to its cost.

The value, Staff witness said, of Clark Hill power is equivalent to its cost because the power is marked and sold at rates equivalent to the power costs. Therefore, the value of power, which is equivalent to cost, is determined partially at price levels prevailing at the time the Clark Hill project was constructed.

Only part of the costs which the Staff witness used, however, are based upon price levels at the time the project was originally constructed. The operation and maintenance costs are current costs and the fixed charges reflect the actual costs of replacements and additions made subsequent to the date of original construction. The computed payments to be made by the downstream beneficiary increase at a rate somewhat less than the rate of increase in the value of the benefits received by the beneficiary.

The Staff witness said that the total annual charges for interest, maintenance and depreciation on the Clark Hill project for the period October 12 through December 31, 1953, amounted to $265,165. That amount was allocated $31,343 to flood control, $34,234 to navigation and $199,588 to power. Of the latter amount, $20,726 was apportioned to downstream power by the ratio of downstream power benefits to total power benefits at site and downstream. Conversely, $178,862 of the annual charges allocated to power was apportioned to at-site power by the ratio of the at-site power benefits to the total power benefits at site and downstream.

The monetary value of the headwater improvements to at-site power production for the period October 12 through December 31, 1953, was $229,078 representing the benefits from the total Clark Hill dam and reservoir and, therefore, represent benefits from the head function as well as the storage function of the dam and reservoir. Thus, the annual costs associated with the dead storage or head function of the Clark Hill dam and reservoir were apportioned 100 percent to at-site power.

The overall apportionment of the annual charges for interest, maintenance and depreciation on the Clark Hill dam and reservoir to the four purposes, namely, flood control, navigation, at-site power and downstream power were as follows:

	Oct. 12–Dec. 31, 1953	1954	1955	Oct. 12, 1953 to Dec. 31, 1955
Flood control	$31,343	$141,845	$144,221	$317,409
Navigation	34,234	154,499	156,738	345,471
At-site power	178,862	1,316,715	1,626,276	3,121,853
Downstream power	20,726	88,124	32,615	141,465
Total	265,165	1,701,183	1,959,850	3,926,198

It has been noted that in its determination of the investment costs of Clark Hill for purposes of calculating other charges the Staff did not employ the total investment in joint-use facilities, namely $54,077,465, but instead eliminated therefrom the investment in flood control and navigation, and used the remaining joint-use facilities attributable to power, that is $45,773,575. (*Supra*, p. 663) As a consequence the Staff did not employ the annual charges for interest, maintenance and depreciation applicable to the larger but to the smaller investment. That is to say, in its headwater benefits study the Staff had used for the year 1955 the figure $1,658,891 as the annual power charges for interest, maintenance and depreciation on the headwater improvement, and that is the value "J" in the Staff's allocation equation. The Staff's testimony is that if, instead, the figure $1,959,850 representing such charges on the joint-use facilities before the allocation to flood control and navigation, had been used for that factor it would be necessary to add to the denominator the annual benefits for flood control ($185,000) and navigation ($201,000).[16]

Making those changes in the formula would result, the Staff contends, in simply assigning to the downstream Stevens Creek plant a portion of the annual charges based on the respective annual benefits which the headwater improvement provided for each of the four purposes of the Clark Hill project, namely, flood control, navigation, at-site power and downstream power. The results derived from the use of this alternative formula, referred to as the "proportional benefits" method as compared with that initially proposed by the Staff are, for the periods indicated, as follows:

	Exhibit No. 3 computation	Exhibit No. 32 computation
1953	$20,726	$20,623
1954	88,124	87,012
1955	32,615	31,932
Total	141,465	139,567

[16] The amounts used by the Corps of Engineers in their December 1955 cost allocation report.

While conceding that the Staff employed for the year 1955 in its alternative formula the proper figures for flood control and navigation benefits, the Company contends that instead of the $1,830,650 figure which the Staff found to be the total annual joint power costs and treated as the monetary value of the headwater improvement to at-site power production (the factor "V_w" in the Staff's formula), the Staff should have used the amount of $7,262,300 representing the annual power benefits at Clark Hill as estimated by the Corps of Engineers for the year 1955. The Company here again contends that the figure $1,830,650 is not a value of power at all but represents that portion of the costs of the joint facilities at Clark Hill allocated to power.

If, the Company contends further, the proportionate benefits method is properly applied in the manner described by the Staff (i.e., the apportionment of the Clark Hill 10(f) costs "to flood control, navigation, at-site power and downstream power in proportion to the respective annual benefits which the headwater improvement provided") the results would be as follows:

1955

$$\frac{\$36{,}714}{\$36{,}714+\$7{,}262{,}300+\$185{,}000+\$201{,}000}\times\$1{,}959{,}850=\$9{,}363$$

In its use of the $1,830,650 rather than the $7,262,300, the Company contends that in this respect the Staff departed from the prior precedents of this Commission such as *Pennsylvania Electric Co.*, Docket No. E–6579 [17] (Piney Plant) 16 FPC 710. In that instance it appears the Staff employed the "separable costs remaining benefits" method of cost allocation in which estimated benefits are used for all purposes.

The Staff concedes that in the Piney Plant proceeding the formula here proposed was not employed. In fact, there no formula, as such, was used. But the situation there differed from the Clark Hill-Stevens Creek situation in that there is no power plant at the upstream government constructed East Branch project. Except for that difference, the Staff asserts, the payments for headwater benefits in Docket No. E–6579 "were determined on a basis parallel to the basis used in Exhibits 3 and 3a."

Although it does not appear in the record here, the Staff asserts in its brief that if the proportionate benefits method which the Staff used for comparative purposes had been used in the Piney instance the downstream payments for headwater benefits would have slightly exceeded those actually charged, whereas the same method would show slightly lower payments if applied to the Clark Hill-Stevens Creek proceeding.

As we have seen the net energy gains at Stevens Creek for the year 1955 as determined by the Staff were 10,953,000 kilowatt-hours, the value of those energy gains was $36,714 (unit gain, 3.352 mills/kwh) and the Staff's proposed assessment for headwater benefits is $32,615 (unit assessment, 2.98 mills/kwh). The Company contends that it would receive nothing for these charges and that, "The storage it provides merely increases the usable flow at Stevens Creek. The conversion of this additional flow into kilowatt-hours of electric energy * * * is * * * a service * * * performed by the head created at Stevens Creek and by its installed generating capacity."

The Company contends that when 2.98 mills per kilowatt-hour is paid by Stevens Creek to Clark Hill as upstream costs the charge is included in the Company's customer bills. At the same time it becomes a credit against Clark Hill costs which is reflected in that project's customer bills. There thus results a discrimination between the customers of the two projects.

[17] Order dated July 6, 1956.

In an average year salable energy from Clark Hill will run about 1,037,080,000 kilowatt-hours a year, and revenues will run about $3,369,500. If there were deducted from those revenues Interior's marketing ($144,000) cost and wheeling expense ($780,000) the unit revenue related solely to generation would be 2.36 mills/kwh. This amount is then 0.62 mills less than the charge which the Staff proposes.

Based upon a "repayment study" for 1955 of three of SEPA's projects the Company computed 10(f) costs of 0.57 mills per kilowatt-hour which includes all of the interest, maintenance and depreciation costs at Clark Hill allocated to energy. This the Company compares with the Staff's assessment of 2.98 mills per kilowatt-hour. As the Staff points out, however, the repayment study referred to by the Company covers the combined operations of three projects, namely, Allatoona, Buford and Clark Hill and the data would not be applicable to Clark Hill alone.

The Secretary contends that the Staff formula used in Exhibit Nos. 3 and 3A presents a logical approach in the determination of the assessment of 10(f) costs; that the contention of the Company that the addition of the quantities V_d+V_u is an addition of values on the one hand and the costs on the other is simply not true. Both of these factors, the Secretary contends, are power values as *measured* by the costs of producing power. Downstream power values, as measured by the net incremental cost to the Company of producing the power, are added to the at-site power values as measured by the cost to the Government of producing at-site power. Thus, the Secretary contends, the power values for both the storage project and downstream project are measured by costs reflecting the appropriate price levels to determine current benefits.

Under the Staff's formula, the portion of the downstream net benefits which is assessed against the downstream beneficiary is given by the ratio of the 10(f) costs at the headwater improvement divided by the total power benefits associated with the 10(f) costs.

The term "V_u" is measured by the total headwater improvement costs *including* the 10(f) costs which are contained in the "*J*" term of the formula. "V_u" is, therefore, dependent to this extent upon "*J*" and any change in the Section 10(f) or "*J*" costs will cause an exactly equal and corresponding change in the V_u term.

The effects of changing any of the independent variables while all other items remain constant are as follows:

1. An increase in Section 10(f) costs results in an increased assessment, while a decrease in Section 10(f) costs results in a decreased assessment.

2. An increase in downstream values results in an increased assessment, while a decrease in downstream values results in a decreased assessment.

3. An increase in the at-site values results in a decreased assessment, while a decrease in at-site values results in an increased assessment.

These relationships are, it is concluded, both reasonable and equitable and the Company's exhibits intended to show the absurdity of the Staff formula actually bear on those relationships.

The Secretary contends further that the Company's analysis by which it attempted to demonstrate the inequity of the Staff formula by comparing the results of the formula for 1955 with the average rates paid by the users of Clark Hill power, is completely invalid, both from the viewpoint of logical approach and from an examination of mathematical soundness.

In making the analysis, the Company determined that the average energy revenue collected from the Allatoona, Buford and Clark Hill projects amounted

to 3.25 mills per kilowatt-hour. That relationship was assumed to be equally applicable to each of those three projects. The Company assumed, too, that the entire costs of marketing and wheeling would be recouped from energy charges rather than distributed between capacity and energy charges, and that the unit Clark Hill storage costs are a function of the total energy generation at Clark Hill rather than a function of the increased generation which may be credited to Clark Hill as a direct result of the storage.

The mathematical unsoundness of the Company's position may be demonstrated, the Secretary insists, by use of the exact records contained in the Company's brief except for a substitution of non-10(f) costs at Clark Hill for 10(f) costs. Using the Company's unit 10(f) energy costs of 0.57 mills per total kilowatt-hour produced and unit non-10(f) energy costs of .52 mills per total kilowatt-hour produced, the sum of the costs gives a unit cost of 1.09 mills per kilowatt-hour for total Clark Hill power costs. The Secretary contends that this result cannot be correct since a unit energy cost of 2.36 mills per kilowatt-hour was assumed by the Company as the starting point of these computations.

Cost-of-Service Studies

While conceding that there are two general approaches to the determination of an equitable assessment of the Section 10(f) costs of a headwater improvement to a downstream beneficiary, namely, a "value-of-service" approach and a "cost-of-service" approach, the Company chose a cost-of-service approach as the more logical of the two for use in this proceeding. In any event, the Company witness concluded that a reasonable method to use would be a cost-of-service approach.

The problem involved in the allocation required under the cost-of-service approach, the Company witness said, falls into two separate and distinct parts. The first part of the problem is the determination of what annual costs of the upstream development should be considered in calculating the charge to be borne by the downstream plant. The second consists of establishing a reasonable basis for allocating such costs among all the persons who benefit from the upstream storage project itself, in other words, spreading the cost of service to all affected persons, or users, by means of reasonable charges.

Since Section 10(f) of the Federal Power Act specifies the items of cost to be included, an appropriate starting point, the Company concedes, would be those items, namely, the upstream owners' annual costs for interest, maintenance and depreciation of the storage dam and reservoir. A second element and perhaps even more important, is the function, or functions, served by the particular upstream dam or reservoir under consideration.

From a functional viewpoint, the Company's argument continues, storage projects can be divided into two broad classes. The first might be termed single-function projects which provide only storage space and, therefore, perform only a storage function. Another class of storage projects perform a dual function. They, too, provide storage space but in addition create a head which is utilized by the generating capacity *at the site*. Thus, dual-function projects perform both a storage function and a head function.

A reasonable basis for the determination of headwater benefits assessment under Section 10(f) of the Federal Power Act requires, the Company contends, consideration of all of the functions performed by a storage project. In general, the Company witness testified, benefits at downstream plants would be attributable only to the storage function of the storage project. Usually the head function of a storage project contributes nothing to the downstream plant. The cost associated with the storage function, he said, cannot be deemed

to be the same regardless of whether or not the dam is also performing a head function at the site. He would thus first allocate the interest, maintenance and depreciation costs for the dam and reservoir between the "head function" and the "storage function" in all instances where the dam performs a dual function.

The Company witness testified further that the most rational method of allocation for the purposes here involved is one based on the relative costs of two single-function dams which could perform separately the head function and storage function performed in this instance by the one dual-function dam at Clark Hill. For this purpose he analyzed the functions of the several levels of the Clark Hill project setting up the physical characteristics of such alternative single-function dams, first for the head function only and second, for the storage function only. He set up the construction costs of the Clark Hill dam and reservoir, and then estimated comparable costs for a single-function dam to perform the same head function as performed by the Clark Hill dam. This cost he found to be $44,243,000. Similarly, he undertook to estimate the comparable costs of a single-function dam whose only function would be to provide 1,340,000 acre-feet of usable power storage. The cost of this latter structure he found to be $38,081,000. These two estimates are to be compared with his construction cost of the Clark Hill multiple-purpose dam and reservoir project—$50,496,000. The relative costs of the head-only and storage-only dams expressed as percentages of the sum of the costs were 53.7 percent and 46.3 percent, respectively, and the Company witness allocated annual costs on the same basis. The annual costs of the Clark Hill dam and reservoir and the functional allocations so determined were as follows:

Year	Annual costs Clark Hill Dam and Reservoir	Functional allocation	
		Head	Storage
1953	$199,588	$107,179	$92,409
1954	1,404,839	754,398	650,441
1955	1,658,891	890,824	768,067

Applying the storage costs so developed to the power and energy attributable to the Clark Hill project for the period under consideration, both at the Clark Hill generating station and at Stevens Creek, the Company witness undertook a determination of the unit cost-of-service for the respective periods. This entailed either an allocation between dependable capacity and energy or the development of an equivalence factor between megawatt-years of dependable capacity and kilowatt-hours of energy on a reasonable basis. Employing a cost of $19.80 per kilowatt-year of dependable capacity and 3.1 mills per kilowatt-hour, the witness arrived at a ratio between the costs of one megawatt-year of dependable capacity and 1,000,000 hours of energy of 6.39 to 1.[18] (*Cf.* House hearings, Public Works Appropriations for 1956, Eastern Section, Part 1, 84th Congress, 1st Session, p. 199)

After converting by the use of that equivalence factor the total Clark Hill dependable capacity to units of energy and adding to the result of that computation the total annual energy generation at Clark Hill and the annual energy gains at Stevens Creek as determined by the Staff, the Company witness divided the amount allocated to the storage function as it appears in the foregoing tabulation by the sum of the energy items, and concluded that the cost of service

[18] The Staff witness questioned the interpretation placed by the Company witness on the document purporting to afford the basis for the cost figures.

associated with the storage services rendered by the Clark Hill project amounted to, for the period October 12——December 31, 1953—0.311 mills per kilowatt-hour; for the year 1954—0.366 mills per kilowatt-hour; and for the year 1955—0.412 mills per kilowatt-hour. Applying these estimated unit costs of service to the Staff's estimates of energy gains at Stevens Creek gives a total cost of service as follows:

Period	Staff's estimates	Unit costs	Total cost of service
	Kilowatt-hour	*Mill/kilowatt-hour*	
Oct. 12–Dec. 31, 1953	6,225,458	0.311	$1,936
1954	29,863,000	.366	10,930
1955	10,953,000	.412	4,513
Total	47,041,458	[1] .369	17,379

[1] Cost of service divided by energy gains.

Similar calculations using the Company's estimated energy gains at Stevens Creek gave estimates of cost of service of 0.323 mills per kilowatt-hour for October 23——December 31, 1953; 0.366 mills per kilowatt-hour for 1954; and 0.412 mills per kilowatt-hour for 1955. The total estimated cost of service for the period October 23, 1953, through December 31, 1955, is $13,886.

The Staff found fault with the equivalence factor (6.39 to 1) between the cost of dependable capacity and energy at Clark Hill developed by the Company's witness on the grounds that in the development thereof the $19.80 per kilowatt-year cost was not Clark Hill cost. Instead, the Staff contends, the cost equivalence factor was derived from a cost equation for power resources for the region and were power value estimates based upon the cost of obtaining power from privately-financed steam-electric plants in the States of Alabama, Georgia, North Carolina and South Carolina. The Staff goes on to say that:

> No showing was made that actual costs of dependable capacity and energy at the federally-financed Clark Hill hydroelectric project were in any way related to costs of dependable capacity and energy at privately-financed steam-electric plants.

The Company replies, however, that the figures of $19.80 per kilowatt-year and 3.1 mills per kilowatt-hour are the precise figures employed by the Corps of Engineers in developing the Clark Hill costs to be allocated for power purposes.[10] These allocated costs are also the power costs used in the repayment studies in Docket No. E–6938. The Company contends its witness' studies show an allocation of 68 percent of the cost to be capacity component and 32 percent to the energy component; since Clark Hill is a peaking generating resource operating at a load factor of only 33.9 in normal water years a 68/32 allocation is much more realistic than the Staff's proposed 50/50 allocation.

The Staff points out that the units of power and energy which the Company witness attributed to the Clark Hill project represented his estimate of the total power output attributable to Clark Hill both at-site and downstream and is not the power output attributable only to the storage function at the upstream plant, exclusive of dead storage. Consequently, it is the Staff's contention that the unit cost determined, for example for 1955 (0.412 mills per kilowatt-hour) does not provide the unit cost of service of the storage function provided by the Clark Hill dam to at-site and downstream power.

[10] The Company insists that its witness used these figures only for the purpose of allocating costs between capacity and energy.

The Staff apparently finds no fault with a cost-of-service approach as such, but contends that the Company witness grossly underestimated the cost of providing the Clark Hill storage service to the Clark Hill and Stevens Creek power plants. The Company's witness had conceded that the head-only dam would probably be economically infeasible and he added: "Similarly, the storage-only dam would be even more economically infeasible, because you couldn't develop any power at-site." His method would allocate anly that portion of the Clark Hill dam and reservoir "deemed to represent the allocation to power."

The Company witness had also testified that, "Within the practical limits that are inherent in this kind of a situation the dams shown [as head-function and storage-function dams, respectively] are intended to be approximately the equivalents of the Clark Hill dam itself with respect to the controlled flood control storage and the surcharge." However, as the Staff points out, there is no exception in Section 10(f) excluding headwater improvements or parts thereof which provide navigation and flood control benefits in addition to downstream power benefits. In the storage-function dam (between elevations 310 and 315) there was provided flood control storage capacity of only approximately 240,000 acre-feet while the Clark Hill project provides 390,000 acre-feet. Furthermore, the Company's storage-function dam would provide 600,000 acre-feet of surcharge storage capacity (between elevations 315 and 326), while Clark Hill provides 950,000 acre-feet.

The Company's witness conceded also that there was in his head-only function dam no usable seasonal storage. Thus, there does not appear in this hypothetical project the 1,340,000 acre-feet in the Clark Hill project between elevations 305 and 330, or any provision for navigation benefits.

The Company's position is that it takes 100 percent of the storage and head functions of the Clark Hill dam and reservoir plus the specific power facilities (at either project) to generate energy at either project.

The cost per unit of electric output at Clark Hill necessarily reflects the costs of the head created by the dam, the costs of power storage and the costs of generating facilities. However, as the increased flows at Stevens Creek are produced by the storage-service only, the cost per unit output at Stevens Creek for this partial service must be less than the unit cost of the total service rendered to the users of the electric output of Clark Hill. The Company contends that the costs of this partial service should be substantially equivalent to the cost of the partial storage service to the downstream users of the increased flows.

The unit costs of this partial service to the purchasers of the energy output of Clark Hill were derived directly from the rates charged by SEPA. They range from 0.26 to 0.42 mills per kilowatt-hour. The Company contends that the equivalent costs to the downstream users of the partial storage service can be no greater than 0.42 mills per kilowatt-hour.

The Staff suggests, however, that it is pertinent to compare the Company's estimated cost of service with what the Company has paid for energy generated at Clark Hill. In 1954 the Company purchased 91,222,750 kilowatt-hours of dump or surplus energy from the Southeastern Power Administration at Clark Hill for which the Company paid $72,855 for the demand component and $342,929 for energy. This computes to 3.76 mills per kilowatt-hour.

In 1955 the Company purchased 75,162,000 kilowatt-hours for which they paid $46,275 as the demand charge and $300,648 as the energy charge. Considering the energy charge alone this computes to 4.00 mills per kilowatt-hour. The arithmetical average of these two figures is 3.88 mills per kilowatt-hour. The Company points out that the Staff's computations would have the bene-

ficiaries of the dam, reservoir and electric plant at Clark Hill pay only 0.48 mills per kilowatt-hour more than the downstream owner who benefits only from the increased flow resulting from the upstream project.

The Staff witness testified that he had considered using a cost-of-service method of apportioning annual charges on the headwater improvement to the downstream Stevens Creek plant and to the at-site Clark Hill power plant but did not use that method because the cost of the storage service rendered by the Clark Hill dam and reservoir would have had to be estimated and a unit charge determined for the estimated electric output, both at-site and downstream, attributable to the storage service rendered. In order to make such estimates it would be necessary to make assumptions which may affect the result greatly. Estimates of cost-of-service vary widely, depending upon these assumptions. However, for the purpose of testing the reasonableness of such a method the Staff witness made three studies of the estimated cost of service rendered by the upstream to the downstream project, through December 31, 1955.

Dead storage capacity at the Clark Hill plant is beneficial only in providing head for the at-site production of power. Therefore, in estimating the cost of service for storage service rendered by the Clark Hill dam and reservoir to the Stevens Creek plant, it was necessary to exclude from the cost of service the part of the dam and reservoir cost attributable to the provision of dead storage. The Staff witness plotted a curve of cost versus elevation for various heights of dam at the Clark Hill site and from that estimated the cost of such an alternative to be approximately $41 million, or about 81 percent of the actual cost of the Clark Hill dam and reservoir.

To estimate the part of the cost of the Clark Hill dam and reservoir which should be associated with the provision of storage benefits to the Stevens Creek plant, the Staff made an allocation of the costs of the Clark Hill dam and reservoir employing the "use-of-facilities" method, sometimes called the "proportionate use-of-capacity" method. This method of cost allocation is commonly used to allocate costs of water resource development projects and is based on the premise that joint-use costs should be allocated to the various purposes in proportion to the degree of use for each purpose. Two different approaches may be taken in determining the proportion of use attributable to the respective purposes. In the case of a storage reservoir, one approach is to make a water-use analysis, the other is to determine the storage capacity available for the use of each purpose. In connection with the former, it is necessary to determine, for example, the amount of storage actually used, the amount of water stored or the amount of water released for each purpose. The latter is in reality a "readiness-to-serve" analysis.

In making this determination the Staff witness assumed that the total power output at Clark Hill was directly proportional to the cost of specific power facilities, for dead storage and for storage excluding dead storage. In effect each dollar is assumed to produce the same quantity of dependable capacity and energy whether it was expensed for specific power facilities, dead storage or storage exclusive of dead storage.

The Staff's testimony is that the dead storage of 1,170,000 acre-feet at Clark Hill merely provides head for the at-site power production and that the difference between the total storage space of 4,400,000 acre-feet and the dead storage provides storage for power operations at both Clark Hill and Stevens Creek. The Staff witness allocated the joint power costs at Clark Hill to the head and storage functions in the ratios of 1,170,000 acre-feet and 3,230,000 acre-feet, respectively, to the total of 4,400,000 acre-feet. This results in assigning 73.4 percent of the cost to the storage function.

Thus, 73.4 percent of the joint cost was said to represent the annual power costs of the Clark Hill dam and reservoir attributable to storage exclusive of dead storage. It was also described as the cost attributable to the storage function that jointly provides power benefits to the at-site Clark Hill plant and the downstream Stevens Creek plant. The joint costs thus attributed to storage (exclusive of dead storage) and the percent of the total cost which those items represent as shown in the Staff's cost-of-service study No. 1 are as follows:

Period	Specific	Joint	Total	Attributable to storage	
				73.4 percent of joint cost	Percent of total cost
Oct. 12–Dec. 31, 1953	$160,367	$229,078	$389,445	$168,143	43.2
1954	1,112,673	1,597,846	2,710,519	1,172,819	43.3
1955	1,339,242	1,830,650	3,169,892	1,343,697	42.4

The percent of total cost thus derived was then applied to the total Clark Hill dependable capacity in kilowatts and the actual annual generation in kilowatt-hours. Using the 1955 cost figures, 99,600 kilowatts of dependable capacity and 150,400,000 kilowatt-hours of energy were found to represent the 1955 power output attributable to the storage function of the Clark Hill dam and reservoir exclusive of dead storage.

Using this procedure, it is necessary to develop cost equivalance factors between Clark Hill dependable capacity and Clark Hill generation since that project produces both dependable capacity and electric energy. To determine a cost equivalence factor between dependable capacity and energy, it is necessary to estimate the part of the total power cost which is associated with the production of each. There is no precise method of making such an estimate yet the estimate made affects greatly the cost of service per kilowatt-hour of electric energy production. To obtain the total dependable capacity of 235,000 kilowatts from the Clark Hill project it is necessary to have the specific power facilities, the dead storage function of the dam and reservoir, and the storage function of the dam and reservoir exclusive of dead storage. And, to obtain the average annual generation of 698 million kilowatt-hours, or the actual generation in any year, it is equally necessary to have each of the aforementioned facilities of the Clark Hill project.

In the first two of his cost-of-service studies the Staff witness assumed that 50 percent of the total annual power cost at Clark Hill should be assigned to the capacity component and 50 percent to the energy component. To check the reasonableness of that assumption he reviewed revenues received by Clark Hill for capacity and for energy. For the seven years 1954 through 1960 energy revenues represented 63.3 percent of the total. In only one year did the capacity revenues exceed energy revenues. For the years 1959 and 1960 energy revenues represented 53.6 percent of the total. He then divided the power cost allocated to capacity for each year by the dependable capacity at Clark Hill and the costs allocated to energy by the energy generated at Clark Hill. Next he developed for each of the periods here involved the ratio between the unit cost per kilowatt of dependable capacity and for each 1,000 kilowatt-hours of energy. As so determined, the cost equivalence factor for the period October 12–December 31, 1953, was found to be 4.06 to one; for the year 1954, 2.44 to one; and for the year 1955, 1.51 to one. The application of these equivalence factors resulted

in an energy charge of 1.87 mills per kilowatt-hour for the period 1953; an energy charge of 2.78 mills per kilowatt-hour for the year 1954; and an energy charge of 4.61 mills per kilowatt-hour for the year 1955. The application of these costs of service to the energy gains at Stevens Creek creditable to the Clark Hill dam and reservoir resulted in assessments for the period October 12 through December 31, 1953, of $11,642; for the year 1954, $83,019; and for the year 1955, $50,493, a total of $145,154.

The Staff witness' second study differed from the first only in the derivation of cost equivalence factors between Clark Hill dependable capacity and Clark Hill generation. In the latter, a single cost equivalence factor was derived and used for all years rather than one for each of the three periods. The Clark Hill dependable capacity of 235,000 kilowatts and the estimated average annual generation of 698,000,000 kilowatt-hours and the total annual power cost at Clark Hill for 1955 were used to derive the cost equivalence factor of 2.97 to one. In the second study there was determined for the October–December 1953 period an energy cost of 2.14 mills per kilowatt-hour; for the year 1954, an energy charge of 2.53 mills per kilowatt-hour; and for the year 1955, an energy charge of 3.15 mills per kilowatt-hour. Applying these costs to the energy gains at Stevens Creek resulted in estimated total costs of service for the October–December 1953 period of $13,322; for 1954, $75,553 and for 1955, $34,502, a total of $123,377.

The Staff witness' third study differed from the first only in that 53.6 percent, rather than 50 percent, of the total annual power cost at Clark Hill was assigned to the energy component. The percentage employed in this study is that derived from the ratio of energy revenues to total revenues for the years 1959 and 1960. In that study the equivalence factor for the October–December 1953 period was found to be 3.50 to one; for 1954, 2.10 to one; and for 1955, 1.31 to one. For the 1953 period there was computed an energy cost of 2.00 mills per kilowatt-hour; for 1954, an energy cost of 2.98 mills per kilowatt-hour and for 1955, an energy cost of 4.93 mills per kilowatt-hour. The application of those unit costs to the estimated energy gains at Stevens Creek resulted in estimated total cost of service for the 1953 period of $12,451, for 1954, $88,992, and for 1955, $53,998, a total of $155,441.

The Company asserts that the Staff witness' determination that 3,230,000 acre-feet of space is an appropriate measure of the usable storage for power purposes, with a resulting allocation of 73.4 percent of joint power costs at Clark Hill to the storage function, is subject to question. The 3,230,000 acre-feet includes 550,000 acre-feet of freeboard storage, which is the space between the maximum water surface and the top of the dam and which is not expected to be used; 950,000 acre-feet of surcharge storage space; and 390,000 acre-feet of flood control storage. The Company contends that none of these three components of the storage space are devoted to power production at either Clark Hill or Stevens Creek and that the acre-feet they represent should not, therefore, be allocated between the head and storage functions. It follows, the Company insists, that out of the total of 4,400,000 acre-feet, only the 1,340,000 acre-feet, which the Staff witness characterized as "conservation storage," constitutes the volumetric measure of the "facility" devoted to the power storage function. Deriving a ratio on the basis of the 1,340,000 acre-feet of "power storage" thus determined and the 1,170,000 acre-feet of dead storage results in the allocation of 53.4 percent of the "facilities" to the power storage function.

Furthermore, the Company continues, dead storage merely produces minimum head and to obtain an appropriate index of measurement of the head function the average head, or average power pool level, must be used. It appears that

the Corps of Engineers has determined that the average power pool level at Clark Hill is at elevation 322 which has a corresponding reservoir capacity of approximately 1,960,000 acre-feet. Substituting the latter figure for the 1,170,000 acre-feet employed by the Staff would result in an allocation of 40.6 percent to the power storage function.

As the Staff has shown, however, flood control storage does provide power benefits downstream and there is no exception in Section 10(f) which would exclude a part of the headwater improvement providing such benefits. Furthermore, the Staff insists, there is no reasonable basis for the exclusion of surcharge storage capacity and freeboard when considering actual costs of the headwater improvement.

The Staff witness testified that the "use-of-facilities" method of cost allocation was commonly used to allocate costs at water-resource development projects. Thereafter, at the Company's request, the Staff submitted a list of some 18 cases where the "use-of-facilities" method of cost allocation had been used to allocate costs of water resource development. On that list appears the Brazos River Authority's Belton project. The Company contends that under the allocation method employed by the Staff, the cost to be allocated to the user of substantially all of the conservation storage would be only 5.5 percent of the total annual cost of the project. The Company insists, however, that under the terms of its contract such user contributes "an amount equal to 11.2 percent of actual annual cost" and argues that this would be precisely the result obtained by applying the "use-of-facilities" method suggested by the Company. The Company argued further that the same error was made by the Staff witness in this instance in that he used the *total* storage space at Clark Hill as the divisor instead of the sum of the space providing power storage and the space providing power head, the two components between which the allocation is to be made.

As has been seen (*supra*, p. 676), the application by the Staff witness of the 73.4 percent (assigned to the storage function on the ratio of acre-feet) to the annual joint power costs results in allocating to the power storage function for the year 1955 the amount of $1,343,697. This is equal to 42.4 percent of the total power cost of $3,169,892, made up of $1,339,242 specific power facilities and $1,830,650 joint power facilities. The amount of specific power facilities ($1,339,242) represents 42.2 percent of the total power costs ($3,169,697). The two items combined bear 84.6 percent of the total power costs for the year 1955. There remains of the total cost $486,953 attributable to joint facilities—dead storage which is 15.4 percent of the total. Splitting the costs allocated to power 50/50 between capacity and energy, as the Staff witness had done, resulted in identical capacity and identical energy costs to specific power facilities, joint facilities—dead storage, and joint facilities—other storage.

Accepting the Staff's conclusion that 73.4 percent correctly represented the cost of the storage service rendered by the Clark Hill dam to the Clark Hill and Stevens Creek plants the interest, maintenance and depreciation costs for such storage service would amount to $1,217,626 ($1,658,891 x .734). The latter amount would be 38.4 percent of the total annual power costs. In the first of its "costs-of-service" studies the Staff witness found for the year 1955 a unit cost of dependable capacity of $6.74 per kilowatt-year and the unit energy charge 4.47 mills per kilowatt. The unit costs of service for storage service only rendered, however, were shown to be $6.96 per kilowatt-year for capacity and 4.61 mills per kilowatt-hour. The latter figures represent 103 percent in each instance of the former ones. Similarly, in the second and

third of the Staff studies the unit costs of interest, maintenance and depreciation were with respect to both capacity and energy unit costs 139 percent and 103 percent of the total unit power costs of the entire Clark Hill project including the storage head and generating functions.

The Staff contends, however, that the comparisons made by the Company do not have the relationship implied thereby. The $6.74 per kilowatt-year of dependable capacity and 2.27 mills per kilowatt-hour of energy which the second of the studies shows as total unit cost for 1955 are not actual costs for that year. The 2.27 mills per kilowatt-hour figure is an energy cost based on an estimated average annual generation at Clark Hill of 698,000,000 kilowatt-hours, whereas the actual generation at Clark Hill in 1955 was only 354,720,000 kilowatt-hours. Employing the latter figure, the total unit cost for 1955 was 4.47 instead of 2.27 mills per kilowatt-hour. Thus, the figure become substantially less instead of 39 percent greater than the total unit energy cost at Clark Hill based on actual 1955 generation.

Comparison and Conclusions

For purposes of comparison there are here set out the amounts of annual charges of the upstream Clark Hill project equitably chargeable (within the purview of Section 10(f)) to the downstream Stevens Creek project as found by the Staff, based upon a value-of-service formula, and as found by the Company based upon a cost-of-service approach. Another column is inserted in which appears the median of the results of the Staff's three cost-of-service studies. In each instance the Staff's determination of energy gains has been employed.

Period	Staff value approach	Company cost approach	Staff cost approach
Oct. 12–Dec. 31, 1953	$20,726	$1,936	$11,642
1954	88,124	10,930	83,019
1955	32,615	4,513	50,493
Total	141,465	17,379	145,154

The Secretary has found that the Staff's approach is a fair and reasonable one. As pointed out by the Staff this is the first proceeding involving a public hearing in which it has been necessary to make the apportionment of annual charges provided for in Section 10(f) of the Act. That being the case, an effort has been made herein to set out rather fully the many contentions made by the participants and so much of the evidence as seems significantly relevant to them. In this connection, it is apparent that there are wide differences of opinion between equally well qualified and able engineers.

In connection with its contention that a cost-of-service approach should be used here, the Company has cited *South Carolina Generating Company*, 16 FPC 52. This was a rate proceeding under Sections 205 and 206 of the Federal Power Act involving the rate for sale of electric energy by a wholly owned subsidiary of the respondent here to Georgia Power Company. The Company there proposed the use of a value-of-service formula but the Commission found "that the cost-of-service formula is the one best adapted in determining just and reasonable rates in this industry * * *," that is, rates to be charged by a public utility to its customers. The Commission added, however, "where all costs are known or clearly determinable." Thus, in that instance, the choice was between accurate and detailed cost figures which were available and demonstrably useful, and a proposed variable basic capacity charge subject to automatic escalation.

The principle there stated is not applicable here because, as has been seen, accurate cost figures are not here available. Furthermore, there is believed to be no analogy between a case in which there is undertaken a determination of just and reasonable rates to utility customers and the equitable apportionment of annual charges with which we are here concerned. For the latter reason also the other authorities cited by the Company on this point are considered inapposite. Neither is it believed that the principles announced by the Commission in *Atlantic Seaboard Corporation*, 11 FPC 43 are applicable here.

On the contrary, this is, indeed, a case of first impression. What is an equitable proportion of the Clark Hill annual charges for interest, maintenance and depreciation which should be borne by the Stevens Creek plant must, in the final analysis, be arrived at by the application of fairness and reasonableness applied to all of the facts developed in the light of what appears to be the Congressional intent.

Giving consideration to all of the evidence presented herein and the arguments of counsel based thereon it is concluded that the assessment formula proposed by the Staff for use in this proceeding achieves fair and equitable results and that the Staff's apportionment by the use thereof of $20,726 for the period October 12, 1953, through December 31, 1953, of $88,124 for the year 1954 and of $32,615 for the year 1955 for annual charges for interest, maintenance and depreciation on the Clark Hill project for downstream power benefits to the Stevens Creek plant are deemed equitable within the purview of Section 10(f) of the Federal Power Act.

Payments of the Costs of Making the Headwater Benefits Determination

It is the contention of the Company, as has been pointed out, that "permittees" as the word is used in the last sentence of the first paragraph of Section 10(f) as amended are the permittees and only non-federal owners of headwater improvements "who have constructed and are operating the upstream project under a permit rather than a license." It has already herein been concluded that this contention is without merit. Consequently, it becomes necessary to make a determination as to the costs of the determination herein which should be assessed against the Company.

The evidence herein shows that the salaries and other expenses incurred by the Federal Power Commission making the studies used by the Staff in this proceeding amounted to $10,013.58. These, however, were costs which had been incurred prior to May 2, 1960, and do not include costs incurred subsequent thereto which are presently undeterminable on this record.

As pointed out by the Staff, it is to be expected that as a result of the studies made herein and the hearing held thereon principles and policies may be developed which will be relevant and applicable to subsequent similar determinations and thereby render less costly those determinations. As a consequence the Staff proposes that there be assessed against the Company as "the cost of making such determination" as contemplated by Section 10(f) the amount of $10,000. The proposal appears reasonable and will be here adopted.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record herein, the evidence adduced and the briefs filed, it is found and concluded, in addition to the findings and conclusions heretofore herein set out, that:

(1) The United States Government is the owner and operator of the Clark Hill project located on the Savannah River, a navigable water of the United States, in Georgia and South Carolina about 21.7 miles upstream from Augusta, Georgia.

(2) South Carolina Electric & Gas Company is the owner and operator of the Stevens Creek hydroelectric project located on the Savannah River about 8.7 miles upstream from Augusta, Georgia and 13 miles downstream from the project named in Finding (1).

(3) South Carolina Electric & Gas Company is a permittee within the meaning of Section 10(f) of the Federal Power Act and as such is subject to the payment of an equitable proportion of the annual charges for interest, maintenance and depreciation on the upstream Clark Hill project within the contemplation of said Section.

(4) South Carolina Electric & Gas Company, by reason of the ownership and operation of the Stevens Creek project is directly benefited by the construction work of the United States at the headwater improvement at the Clark Hill project.

(5) Such benefits were reflected during the period September through December 1950 in energy gains at Stevens Creek in the amount of 98,000 kilowatt-hours.

(6) Such benefits were reflected during the calendar year 1951 by energy gains of 1,002,000 kilowatt-hours.

(7) The operations of Clark Hill, due to the initial filling of the reservoir, resulted in a decrease in generation at Stevens Creek in 1952 in the amount of 6,086,000 kilowatt-hours. The value of the decrease in generation at Stevens Creek, due to the initial filling of the Clark Hill reservoir, was offset on October 11, 1953, by the value of energy gained at Stevens Creek attributable to Clark Hill operations.

(8) The energy gains at the Stevens Creek project attributable to the operations of the Clark Hill project were 6,225,458 kilowatt-hours during the period October 12–December 31, 1953; 29,863,000 kilowatt-hours for the year 1954, and 10,953,000 kilowatt-hours for the year 1955.

(9) The net monetary values of the energy gains at the Stevens Creek project attributable to the operations of the Clark Hill project were $26,545 for the period October 12–December 31, 1953; $106,939 for the year 1954, and $36,714 for the year 1955.

(10) There was no change in the dependable capacity of the Stevens Creek plant attributable to the operations of the Clark Hill project during the period September 1, 1950, through December 31, 1955.

(11) For the purpose of computing annual charges for the Clark Hill project, the first day of the month following the installation of each generating unit was considered the "in-service" date and such dates were February 1, 1953, March 1, 1953, June 1, 1953, November 1, 1953, February 1, 1954, June 1, 1954, and August 1, 1954, for such units, respectively.

(12) The total investment cost of the Clark Hill project upon the installation of all seven generating units was $83,098,705, of which $29,021,240 represented investment in specific power facilites and $54,077,465 represented joint-use facilities.

(13) The joint-use facilities at Clark Hill, namely, the dam and reservoir constitute the headwater improvement which provided benfits to the Stevens Creek project for the period here involved, that is, October 12, 1953, through December 31, 1955, and which facilities, in addition, provided flood control and navigation benefits and benefits to the at-site Clark Hill power plant during that period.

(14) The investment cost of $54,077,465 of the Clark Hill dam and reservoir is properly allocated $3,979,091 to flood control, $4,324,799 to navigation, and $45,773,465 to power.

(15) The annual charges for interest, maintenance, and depreciation on the Clark Hill dam and reservoir for the period October 12 through December 31,

1953, totaled $265,165, and that amount is properly apportioned $31,343 to flood control, $34,234 to navigation, and $199,588 to power.

(16) The annual charges for interest, maintenance, and depreciation on the Clark Hill dam and reservoir for the year 1954 aggregated $1,701,183, and that amount is properly apportioned $141,845 to flood control, $154,499 to navigation, and $1,404,839 to power.

(17) The annual charges for interest, maintenance, and depreciation on the Clark Hill dam and reservoir for the year 1955 aggregated $1,959,850, and that amount is properly apportioned $144,221 to flood control, $156,748 to navigation, and $1,658,891 to power.

(18) The portion of the annual charges set out in Finding (15) deemed equitable for payment by South Carolina Electric & Gas Company for the period October 12–December 31, 1953, is $20,726.

(19) The portion of the annual charges set out in Finding (16) deemed equitable for payment by South Carolina Electric & Gas Company for the year 1954 is $88,124.

(20) The portion of the annual charges set out in Finding (17) deemed equitable for payment by South Carolina Electric & Gas Company for the year 1955 is $32,615.

(21) The portion of the annual charges set out in Findings (15) through (17) for the entire period October 12, 1953, through December 31, 1955, aggregates $141,465.

(22) An equitable portion of the cost of making the determination herein properly chargeable to South Carolina Electric & Gas Company is $10,000.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission that South Carolina Electric & Gas Company shall pay to the Federal Power Commission for the purposes set out in the foregoing findings a sum of $151,465, which payment shall be made within 90 days from the date of issuance of this decision.

EDWARD B. MARSH,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, Charles R. Ross, and Harold C. Woodward.

SOUTHERN CALIFORNIA EDISON COMPANY AND CALIFORNIA ELECTRIC POWER COMPANY, DOCKET NO. E-7072

ORDER AUTHORIZING SALE, ACQUISITION AND MERGER OR CONSOLIDATION OF FACILITIES

(Issued March 28, 1963)

Southern California Edison Company (Edison), incorporated under the laws of the State of California and doing business in the States of California, Arizona and Nevada, with its principal business office at Los Angeles, California, and California Electric Power Company (California Electric) incorporated under the laws of the State of Delaware doing business in the States of California and Nevada, with its principal business office at San Bernardino, California filed a joint application on November 8, 1962, and supplements thereto on December 13 and 17, 1962 requesting authorization, pursuant to Section 203 of the Federal Power Act, for Edison to acquire and California Electric to sell certain electric transmission facilities.

Edison is engaged in the generation, purchase, transmission, distribution and sale of electric energy in parts of southern California. California Electric is engaged in the generation, purchase, transmission, distribution, and sale of electric energy in parts of southeastern California and southwestern Nevada.

Edison proposes to acquire, and California Electric proposes to sell approximately 34 circuit miles of 115 kv single circuit, steel tower transmission line, including the easements and rights of way therefor. This line is located generally between Seal Beach, California, and Chino, California, and is entirely within Edison's service territory. The transmission line was constructed in 1929 for the purpose of transmitting power between the system of the Department of Water and Power of the City of Los Angeles, and the system of California Electric. During recent years, only relatively small amounts of energy have been transmitted over the line and California Electric states that it will be no longer necessary or useful in its performance of its duties as a public utility. The proposed transaction will have no effect upon any contracts for the purchase, sale, or interchange of electric energy. Edison states that in as much as the transmission line is located within its territory, approximately 24 circuit miles of the line can be utilized as a part of Edison's 66 kv transmission system in lieu of construction presently planned to meet the expanding requirements of Edison's customers in this area, and Edison is of the opinion that the remaining 10 circuit miles of the line will be utilized in the future to serve large customers.

Edison proposes to acquire the transmission line from California Electric for a cash consideration of $375,000, plus California state sales tax of $9,960, for a total cost of $384,960. The Applicants state that the purchase price was negotiated and is approximately the average of the estimated reproduction cost new, less depreciation, of the properties to be acquired and the savings to Edison of the cost of future transmission line construction which will become unnecessary due to the use, in lieu thereof, of portions of the facilities which would be purchased.

On the books of California Electric, the recorded original cost of the facilities is $350,204, accumulated provision for depreciation is $116,385, resulting in a net plant of $233,819.

Edison proposes to record the acquisition of the transmission plant at original cost of $350,204 and also to record the above accumulated provision for depreciation of $116,385. Edison's total cost of $384,960 will be $151,141 in excess of net plant of $233,819 as set forth above. Therefore, Edison's purchase of the plant will result in the creation of an electric plant acquisition adjustment of $151,141. Edison has agreed to eliminate the entire amount of the acquisition adjustment by a charge to Account 216, Unappropriated Earned Surplus.

Of the total amount of $384,960 to be paid by Edison, California Electric will retain the consideration of $375,000 and it will be responsible for the payment to the State of California of $9,960 sales tax. The consideration of $375,000 compares with net plant of $233,819 as set forth above, and, therefore, California Electric's sale of the transmission line will result in a gain of $141,181. Of this total gain, $47,604 will be credited to Account 236, Taxes Accrued, for income tax on the gain, and the balance of $93,577 will be credited to Account 216, Unappropriated Earned Surplus.

Written notice of application has been given California Public Utilities Commission and State Railroad Commission of Nevada and to the Governors of those States. Notice of application was also published in the Federal Register on November 22, 1962, (27 F.R. 11517) stating that any person desiring to be heard or to make any protest with reference to said application should on or before December 3, 1962, file with the Federal Power Commission, Washington 25, D.C., petitions or protests. On December 3, 1962, California Public Utilities Com-

mission filed a notice of intervention. On February 28, 1963, the Public Utilities Commission of California filed a copy of its order authorizing the above described transaction and withdrew its notice of intervention heretofore filed. No other petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicants, Southern California Edison Company and California Electric Power Company, corporations, are public utilities within the meaning of Section 203 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's orders issued July 31, 1961, entitled *City of Colton, California* v. *Southern California Edison Company*, Docket No. E-6821 (25 FPC 223) for Southern California Edison Company and August 30, 1957, *California Electric Power Company*, Docket No. E-6670 (18 FPC 239) for California Electric Power Company.

(2) By the proposed acquisition of facilities as described above, Edison will acquire and merge or consolidate with its facilities subject to the jurisdiction of the Commission, certain electric facilities of California Electric, another person, within the meaning and subject to the requirements of Section 203 of the Act.

(3) By the proposed sale of facilities California Electric would dispose of a part of its facilities subject to the jurisdiction of the Commission within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(4) The proposed acquisition and merger of consolidation of facilities and the proposed sale of facilities, all as described above upon the terms and conditions set forth in the application and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 in the Federal Power Act for the reasons set forth above.

(5) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed sale by California Electric of a part of its transmission facilities and the acquisition and merger or consolidation therof by Edison, all as described above are authorized and approved upon the terms and conditions and for the purposes set forth in the application, subject to the provisions of this order.

(B) Edison and California Electric shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) The electric acquisition adjustment created by Edison's acquisition of the transmission facilities shall be eliminated by a charge to Account 216, Unappropriated Earned Surplus.

(D) This authorization shall expire unless the transaction herein authorized and approved are consummated within 180 days from the date of issuance of this order.

(E) The foregoing authorization and approval is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before this Commission, and nothing in this order shall be construed as an acquiescence by this Commission in any estimate or determination or cost or any valuation of property claimed or asserted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

THE MONTANA POWER COMPANY, PROJECT NO. 1084

ORDER ACCEPTING SURRENDER OF LICENSE
(TRANSMISSION LINE)

(Issued April 1, 1963)

Application was filed on January 11, 1963, by The Montana Power Company (Licensee) of Butte, Montana, for surrender of its license for transmission line Project No. 1084 affecting lands of the United States within the Deerlodge (formerly Madison) National Forest, in Madison County, Montana.

According to the application, the license for the line is no longer required since the energy once transmitted over the line is no longer needed by any of the licensee's customers once served by the line, and the line has been dismantled and removed from the lands of the United States involved.

The Forest Service has advised that all of the poles and wire for the line were removed as of November 2, 1962, and the lands of the United States affected had been restored to a condition satisfactory to the Service.

Annual charges under the license, in the amount of $5.00, have been paid through the calendar year 1962.

The Commission finds:

Acceptance of surrender of the license for Project No. 1084 is appropriate, as hereinafter provided.

The Commission orders:

Surrender of the license for Project No. 1084 is hereby accepted, effective as of December 31, 1962.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PENNSYLVANIA ELECTRIC COMPANY, DOCKET NO. E-6579

DETERMINATION OF PROPORTION OF ANNUAL CHARGES FOR HEADWATER BENEFITS

(Issued April 1, 1963)

By Commission order issued August 27, 1954, in the above entitled matter, an investigation was instituted pursuant to the provisions of the Federal Power Act, particularly Section 10(f) thereof, for the purpose of enabling the Commission to determine whether the Piney hydroelectric development of the Pennsylvania Electric Company on the Clarion River, Pennsylvania, maintained and operated under license issued pursuant to the provisions of the Act and designated as Project No. 309, is directly benefited by the construction and operation of the upstream East Branch Reservoir of the United States and, if it so finds, to assess against the Company the equitable proportion of the annual charges for interest, maintenance, and depreciation on the East Branch headwater improvement which the Company should pay to the United States. In addition, under the provision of Section 10(f) of the Act, the Company is required to pay to the United States the cost of making such determination as fixed by the Commission.

The East Branch headwater improvement is located on the East Branch of the Clarion River about seven miles northeast of Johnsonburg, Pennsylvania. Construction of the East Branch headwater improvement was commenced in 1947 and it was placed in operation in June 1952 for flood control and other streamflow regulation.

Project No. 309 was completed in 1926. It is located on the Clarion River about 80 miles downstream from the East Branch Reservoir, and has an installed capacity of 28,800 kilowatts.

By orders issued July 6, 1956 (16 FPC 710), October 27, 1959 (22 FPC 752), and November 13, 1962 (28 FPC 807), the Commission determined the equitable proportion of the above stated annual charges for the years 1952 through 1961 and fixed the costs of making such determination.

Investigations made pursuant to the Commission's order of August 27, 1954, revealed that the Piney Plant has directly benefited from the construction and operation of the East Branch Reservoir and on three occasions the Commission has made headwater-benefits determinations of the Company's equitable proportion of the annual charges on the East Branch Reservoir for interest, maintenance, and depreciation, and rendered assessments based on these determinations. On the basis of the investigation for the period January 1, 1962, through December 31, 1962, the average of the annual payments made in the past for a portion of the interest, maintenance, and depreciation on the East Branch headwater improvement, in the amount of $2,150, would constitute an equitable annual charge to be paid for the benefits received from the headwater improvement for said period.

The Commission determines:

The equitable proportion of the average annual charges for interest, maintenance, and depreciation on the East Branch headwater improvement to be paid by the Pennsylvania Electric Company to the United States for benefits directly received for the period from January 1, 1962, through December 31, 1962, is $2,150.

The Commission finds:

The cost to the Commission of making the determination herein is $50.00.

The Commission orders:

Payment to the Commission of the sum of $2,150.00 and $50.00 for the above stated purposes shall be made by the Pennsylvania Electric Company within 30 days from the date of issuance of this determination.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SOUTHERN CALIFORNIA EDISON COMPANY, AND PACIFIC GAS & ELECTRIC COMPANY, DOCKET NO. E–6578

DETERMINATION OF PROPORTION OF ANNUAL CHARGES FOR HEADWATER BENEFITS FOR THE YEARS 1954–1962

(Issued April 1, 1963)

By Commission order issued August 27, 1954, an investigation was instituted pursuant to the provisions of the Federal Power Act, particularly Section 10(f)

thereof, for the purpose of enabling the Commission to determine whether certain hydroelectric developments on the Kern River, maintained and operated under licenses issued under the Act: namely, the Borel project (License No. 382) and the Kern No. 1 Project (License No. 1930) of the Southern California Edison Company, and the Kern Canyon Project (License No. 178) of the Pacific Gas & Electric Company, are directly benefited by the construction and operation of the upstream Isabella Project of the United States and, if it so finds, to assess against the companies the respective equitable proportion of the annual charges for interest, maintenance, and depreciation on the Isabella headwater improvement which the companies should pay to the United States. In addition, under the provisions of Section 10(f) of the Act, the companies are required to pay to the United States the costs of making such determination as fixed by the Commission.

The Isabella headwater improvement is located on the Kern River, near Isabella, California, and was constructed by the Corps of Engineers, Department of the Army. Completed in 1954, the Isabella project is operated for the primary purposes of flood control and irrigation; there are no power generating facilities nor specific power features at the project.

The Southern California Edison Company's installed capacity is 9,200 kw at the Borel development, and 16,000 kw at the Kern No. 1 development; Pacific Gas and Electric Company's Kern Canyon development has an installed capacity of 10,000 kw.

The investigation made for the years 1954 through 1959 discloses that the Isabella headwater improvement caused an increase in generation at both Southern California Edison Company plants totaling 110,240,000 kwh, while the energy gains realized by Pacific Gas and Electric Company by the improvement totaled 38,630,000 kwh. During the period covered by this investigation, the operation of the Isabella project did not affect the dependable capacity of the Borel, Kern No. 1 and Kern Canyon developments. Pursuant to an understanding with the parties, the staff extended the investigation to cover the benefits received by the downstream projects through December 31, 1962, so as to establish an average annual payment for the calendar years 1960, 1961, and 1962.

The Commission determines:

On the basis of the investigation for the period April 15, 1954, through December 31, 1959, the portion of the annual charges of interest, maintenance, and depreciation on the Isabella headwater improvement to be assessed against Southern California Edison Company and Pacific Gas and Electric Company, in the amount of $243,476, is 5.17 percent of the total of such annual charges. For the period January 1, 1960, through December 31, 1962, 5.17 percent of the annual charges of interest, maintenance, and depreciation on the Isabella headwater improvement, or $133,950, would constitute equitable annual charges to be paid by said companies.

The equitable proportion of annual charges for interest, maintenance, and depreciation on the Isabella headwater improvement, and the costs of the making of this determination to be paid by the Southern California Edison Company and by the Pacific Gas and Electric Company, respectively, for the period April 15, 1954, through December 31, 1962, are in the amounts and proportions as follows:

Period	Total assessment	Southern California Edison Co.		Pacific Gas and Electric Co.	
		Percent	Payment	Percent	Payment
For headwater benefits:					
1954–59	$243,476	70.9	$172,624	29.1	$70,852
1960–62	133,950	72	96,450	28	37,500
Total	377,426		269,074		108,352
For cost of studies:					
1954–59	10,415	70.9	7,384	29.1	3,031
1960–62	1,230	72	886	28	344
Total	11,645		8,270		3,375

The Commission orders:

Payment to the Commission of the sum of $277,344 by Southern California Edison Company, and of $111,727 by Pacific Gas and Electric Company for the above-stated purposes shall be made within 30 days from the date of issuance of this determination.

OPINION NO. 385

NORTHERN NATURAL GAS COMPANY, DOCKET NOS. G–12153 AND G–15335; PERMIAN BASIN PIPELINE COMPANY, DOCKET NO. G–15336

MEMORANDUM OPINION AND ORDER DENYING MOTION TO VACATE

(Issued April 2, 1963)

Syllabus

1. Citing *Mississippi River Fuel*, Commission *states* that inquiry as to whether there exists any factual justification for price parent pipeline is paying subsidiary is essential to the fixing of just and reasonable rates. P. 690.
2. Commission *holds* that *Montana-Dakota* and so called "filed rate" doctrine are concerned with jurisdiction of District Courts, not with Commission power to examine subsidiary's costs in fixing parent's rates. P. 691.
3. Possible inability of Commission to grant reparations is of no consequence to public, Producing or to Northern since such grant would merely require certain inter-company bookkeeping changes. P. 691.
4. In view of its obligation to determine whether subsidiary's rates were economically justified, Commission does not think it is compelled to accept those rates as *bona fide* merely because they were filed. P. 691.
5. Commission *notes* parent and subsidiary had prior notice of its intent to examine cost basis of subsidiary sale to parent and such fact accentuates invalidity of their position. P. 691.
6. Commission is not bound by statements of Staff Counsel. P. 692.
7. Commission *denies* Northern's motion to vacate orders remanding proceedings to the Examiner. P. 692.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, Charles R. Ross, and Harold C. Woodward.

On February 20, 1963, Northern Natural Gas Company (Northern) filed a motion to vacate the Commission's order of July 2, 1962, remanding these proceedings, and the notice of date of hearing issued February 25, 1963. Our remand resulted from the parties' failure to adduce evidence as to the costs of Northern

Natural Gas Producing Company (Producing), Northern's wholly-owned subsidiary. Instead, they included in Northern's cost of service purchased gas costs reflecting Producing's filed rates. Since Producing is a 100% owned subsidiary of Northern, we remanded the case to the examiner to determine if there exists any factual justification for the price Northern is paying Producing. Such an inquiry is essential to the fixing of just and reasonable pipeline rates. *Mississippi River Fuel Corp.* v. *FPC* 252 F. 2d 619 (D.C. Cir., 1957) *cert. den.*, 355 U.S. 904.

An additional reason for examination of Producing's costs is set out in our order of July 2, 1962:

> In October 1952, Northern spun off to this newly organized subsidiary all of its reserves, leaseholds, and production equipment, and entered into long-term purchase contracts for the gas underlying such properties The Commission immediately instituted an investigation to ascertain whether the transfer had violated the terms of a certificate application issued Northern only a few months earlier. In its order terminating that investigation without action against the company,[1] the Commission indicated that Northern's actions in transferring wells and leases and repurchasing the gas underlying such wells and leases might raise an important rate question in the future. It went on to state (12 FPC, at 68):
>
> > Purchase contracts entered into between Northern and Producing Co. were not negotiated at arm's length. The Commission now has and will continue to have complete jurisdiction over such contracts in any future rate proceeding when it comes to determining Northern's cost of service. Northern cannot change that situation by any action it might take. *When the occasion arises, the Commission will deal with the rate aspects of this problem and will protect the public interest to the limit of our power under the Natural Gas Act.* (Emphasis added.)
>
> Since that time every Northern rate case in which the cost of gas produced by its subsidiary might have been an issue has been settled; none has reached the Commission for decision.

Since 1954, moreover, Producing's rates have been accepted for filing by the Commission with the express condition that acceptance shall not be construed as constituting approval of the rates or a recognition of any contractual right that may be associated with the rate. Moreover, two Section 5(a) proceedings have been instituted against Northern Producing. Both were terminated as part of general settlements of Northern's rates in Section 4(e) proceedings. But in discontinuing the 5(a) proceedings we did not approve the rates then in effect. Thus, in Docket No. G-9409 the Commission said:

> For the purposes of this settlement it was further agreed and recognized that the termination of these proceedings at this stage would not be determinative of the reasonableness of the rates of either Northern Natural Gas Producing Co. or Permian Basin Pipeline Co. Accordingly, it was further agreed that the termination of the proceedings in Docket Nos. G-9409 and G-9410 under these circumstances should not be construed as a recognition that the rates of Northern Natural Gas Producing, or Permian Basin Pipeline Co. which are the subject of such proceedings are just and reasonable or otherwise. [Northern Natural Gas Co., 16 FPC 803, 807 (1956)].

Northern says we cannot lawfully consider the costs of a wholly-owned production subsidiary which sells gas to its parent pipeline in arriving at the pipeline's purchased gas costs. It argues that we are bound to accept at face value the prices charged the parent pursuant to rate schedules filed by the subsidiary and

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[1] Northern Natural Gas Company, Docket No. G-2085, 12 FPC 66 (April 25, 1953).

neither suspended nor conditioned by us. For this proposition, Northern cites *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246. That case held that a federal district court lacks jurisdiction to compel a public utility to make restitution to another public utility because the rates charged by the seller—which it had filed with the Commission—were in excess of the "just and reasonable rates" the seller was obligated to charge under Section 205(a) of the Federal Power Act, 49 Stat. 851, 16 U.S.C. § 824d(a). The Supreme Court held that the District Court lacked jurisdiction to determine what the reasonable rate should have been. Congress, the Court said, had assigned the responsibility for making that determination to this Commission.

The Court said:

> Petitioner cannot separate what Congress has joined together. It cannot litigate in a judicial forum its general right to a reasonable rate, ignoring the qualification that it shall be made specific only by exercise of the Commission's judgment, in which there is some considerable element of discretion. It can claim no rate as a legal right that is other than the filed rate, whether fixed or merely accepted by the Commission, and not even a court can authorize commerce in the commodity on other terms.
>
> We hold that the right to a reasonable rate is the right to the rate which the Commission files or fixes, and that, except for review of the Commission's orders, the courts can assume no right to a different one on the ground that, in its opinion, it is the only or the more reasonable one. (341 U.S. at 251–52).

Plainly, Montana-Dakota Utilities, and the so-called "filed rate" doctrine which it announced, are concerned with the jurisdiction of the District Courts, and not with this Commission's power to examine a subsidiary's costs in fixing its parent's rates.

The majority in *Montana-Dakota Utilities* also refused to remand "to the District Court with directions to refer issues to the Federal Power Commission", 341 U.S. at 253, on the ground that the Commission lacked authority under the Federal Power Act to grant reparations to the purchasing utility.[1] The teaching of this part of the Court's opinion may be that we cannot direct Producing to make reparations to its parent in the event its rates are found to exceed cost (including a reasonable rate of return). Since a grant of reparations would merely require certain inter-company bookkeeping changes, we think our possible inability to grant the reparations is of no consequence either to the public, to Producing, or to Northern Natural. Consequently, and in view of our obligation to determine whether Producing's rates were economically justified, *Mississippi River Fuel Co.* v. *FPC*, *supra*, we do not think we would be compelled to accept those rates as *bona fide* merely because they were filed. *Home Gas Co.*, 2 FPC 402 (1941). *Cf. Western Distributing Co.* v. *Public Service Commission of Kansas*, 285 U.S. 119 (1932). This would be so even if our actions with respect to Northern and Producing, detailed above, had not expressly put them on notice that we intended at an appropriate time, to examine the cost basis of Producing's sales to Northern. The fact that Northern and Producing have been on such notice accentuates the invalidity of their position.

Northern also points out that in another case now pending before an Examiner[2] staff counsel took the position that the costs of United's producing subsidiary should not be considered in fixing United's rates because the subsidiary's rates were being reviewed simultaneously in another proceeding. Northern

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[1] In this respect, the Natural Gas Act parallels the Federal Power Act.

[2] United Gas Pipe Line Co., Docket No. RP63–1.

says staff counsel relied upon the filed rate doctrine in urging this course of action upon the Examiner, and that we should adhere to and apply that doctrine here. The short answer to that argument is that this Commission is not bound by statements made by staff counsel. To determine, at this time, whether Northern has correctly characterized staff's position in the *United* case, and if so, whether we agree with it would be improper, since the *United* case may come before us shortly.

Accordingly, Northern's motion to vacate should be, and it is, denied.

The Commission orders:

The motion of Northern Natural Gas Company filed February 20, 1963, asking the Commission to vacate its order of July 2, 1962, and its notice of February 5, 1963, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NOS. G-12446, G-12447; CONTINENTAL OIL COMPANY, DOCKET NO. G-12432

ORDER GRANTING APPLICATIONS FOR REHEARING

(Issued April 2, 1963)

Applications for rehearing have been filed by Texas Eastern Transmission Corporation, Continental Oil Company, Sun Oil Company, General Crude Oil Company, and M. H. Marr with respect to our Opinion No. 378 and Order issued February 6, 1963, 29 FPC 249. In our opinion we found that the arrangement by which the producers conveyed leasehold interests in the Rayne Field to Texas Eastern was in reality a sale for resale in interstate commerce subject to our jurisdiction, and we therefore deferred decision on Texas Eastern's application for a certificate until the company and the producers should enter into a new arrangement and make appropriate filings.

Continental argues that our order of July 14, 1961, 26 FPC 167, gave it no notice that jurisdiction was to be considered in the remanded proceedings, that it was only a nominal party and did not participate in the remanded proceedings, and that it was surprised and denied due process with respect to the jurisdictional issue. It also contends that Sun, Marr and General Crude were also denied due process and were improperly ordered to make filings although they were not parties. Marr likewise objects to lack of notice or opportunity for a hearing and also contends that it has been denied due process of law.[1]

We think there is no merit to the contentions that the jurisdictional question was not in issue in the remanded proceedings, and certainly Continental as a party thereto was or should have been aware that its role of being only "nominally a party" in the case was being seriously challenged by the staff. The other three producers probably also had actual knowledge that the status of their sale to Texas Eastern was being raised before the Commission. While we doubt that any of the producers were deprived of due process, this is a matter of first impression and the Commission, having previously permitted Sun, Marr and General Crude to withdraw their applications to make jurisdictional sales

[1] Sun and General Crude do not request rehearing on the ground that they were not parties or did not receive appropriate notice that the jurisdictional question was in issue.

to Texas Eastern, has taken no express action to insure that they were made parties to the reopened proceedings. In the special circumstances of this case we believe we should take extra precautions to assure that the producers have had a full opportunity to present their case.

As indicated by the applications for rehearing, our opinion and order made Sun, Marr and General Crude parties to these proceedings and we shall treat them as such. All four of the producers have argued at length the jurisdictional question raised by the record in this proceeding on legal grounds in their applications for rehearing and nothing in their petitions persuades us that on the basis of the facts presently before us we should reconsider Opinion No. 378. Indeed the subsequent decision of the Supreme Court in *Northern Natural Gas Co.* v. *State Corporation Commission of Kansas*, 372 U.S. 84, No. 62, February 18, 1963, emphasizes the broad nature of our exclusive jurisdiction. However, Continental and Marr indicate that they desire a hearing to supplement the record even though they have not indicated in what respect the record is incomplete. Before making further disposition of these proceedings we shall therefore grant rehearing to afford the four producers an opportunity to show whether a proper resolution of this matter requires a further evidentiary hearing. To this effect we shall require that they file within 30 days of this order a further pleading setting forth the nature of the evidence they propose to submit and what they intend to prove by such evidence at any further hearing in this proceeding so that we may determine whether any further evidentiary hearing is necessary. Such evidence should be confined to whether we have jurisdiction over the transaction between the producers and Texas Eastern presently before the Commission, whether the present lease sale type of arrangement is in the public interest and whether it may be rescinded. Evidence from the producers on price or rate levels for this sale, assuming it is to be jurisdictional, is not appropriate at this stage of the proceedings, nor is evidence of other arrangements which might be made between the parties in accordance with our Opinion No. 378.

If it appears that significant new evidence relevant to the issues referred to above will be introduced, we shall set the case for further hearing and simultaneously specify the procedure for further action in the case. Since Texas Eastern's application for a certificate is closely connected with the resolution of the jurisdictional question, we shall also grant its application for rehearing subject to the provisions of this order.

The Commission further finds:

It is in the public interest that the applications for rehearing filed by Texas Eastern, Continental, Sun, Marr, and General Crude be granted subject to the procedures discussed above and set forth in paragraph (B) below.

The Commission orders:

(A) The applications for rehearing filed by Texas Eastern, Continental, Sun, Marr, and General Crude are hereby granted subject to the procedures discussed above and set forth in paragraph (B) below.

(B) If Continental, Sun, Marr or General Crude desire a further evidentiary hearing, they shall notify the Commission within 30 days of the issuance of this order setting forth specifically the nature of the evidence which they propose to introduce, and what they intend to prove thereby. The evidence shall be confined to the following issues: (1) Whether the Commission has jurisdiction over the sale of leases to Texas Eastern, (2) whether the lease sale type of arrangement between the producers and Texas Eastern is in the public interest, and (3) whether the lease-sale arrangement may be rescinded and

another arrangement substituted. The evidence shall not include cost data or other data in support of a particular price or rate level, or evidence of other arrangements between the parties.

Commissioner Woodward *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION AND FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP63-172

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 2, 1963)

On December 17, 1962, Transcontinental Gas Pipe Line Corporation (Transco) and Florida Gas Transmission Company (Florida Gas) some times referred to as (Applicants) filed in Docket No. CP63-172 their joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to construct and operate certain interconnection facilities and to use an existing facility for the purpose of an interconnection in case of emergency.

Applicants propose to construct the emergency interconnection at the point of crossing of Transco's 24-inch Southeast Louisiana Lateral and Florida Gas' 24-inch main line in the Southwest corner of St. Helena Parish, Louisiana, and to utilize an existing interconnection at the tailgate of the Sun Oil Company's Starr Gasoline Plant, Starr County, Texas, as the second emergency interconnection. The purpose of such interconnections is to enable either applicant to furnish the other with a supply of gas during an emergency, when it is possible. Any volumes of gas delivered on an emergency basis will be returned in kind within sixty (60) days.

The estimated total cost of the proposed facilities to be constructed is $31,600. Of this amount $22,400, representing the estimated cost of the connecting piping, measuring and regulating facilities to be installed, owned and operated by Transco, will be shared equally by each Applicant. The balance of $9,200 represents the estimated cost of the side tap valves which each company will construct, own and operate at its own expense. The funds to finance these costs will be from company capital.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 18, 1963, respecting the matters involved in and the issues presented by the application herein.

No petition to intervene or protest to the granting of the application has been received. Staff Counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Transcontinental Gas Pipe Line Corporation and Florida Gas Transmission Company are "natural gas companies" within the meaning of the Natural Gas Act as stated by each Applicant in the application.

(2) The facilities hereinbefore described are to be used in the transportation and sale of natural gas in interstate commerce, subject to the requirements of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations thereunder.

(4) The construction and operation of the proposed interconnection facilities for the purposes stated in the application are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (3) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicants to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (3) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TRUNKLINE GAS COMPANY, DOCKET NO. CP61-231

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 2, 1963)

On March 3, 1961, Trunkline Gas Company (Applicant) filed in Docket No. CP61-231 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to construct and operate certain facilities and to transport and deliver natural gas to Alpha Chemical Corporation, Collierville, Tennessee (Alpha), all as more fully set forth in the application.

Applicant proposes to sell to Alpha up to 200 Mcf of natural gas per day on a firm basis, subject to reduction or discontinuance if at any time, because of conditions beyond the reasonable control of Applicant, the volumes of gas available for delivery by Applicant on its pipeline system are not adequate to meet its firm contractual demands. Total annual sales are estimated as follows:

1st year—4,525 Mcf; 2d year—11,481 Mcf; 3d year—16,008 Mcf.

Alpha's plant is for the intermediate processing of certain resins, plastics and other chemical compounds. Alpha would use the natural gas partially for manufacturing, partially for processing and for wintertime space heating purposes.

737-369—64——47

Applicant will construct and operate such measurement facilities as necessary to provide the proposed service at an estimated total cost of $6,500 to be financed out of funds on hand.

By letter, dated March 30, 1961, Applicant was granted temporary certificate authorization to construct and operate the proposed facilities and to transport and deliver natural gas.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 19, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G–882 (8 FPC 250).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Trunkline Gas Company, to construct and operate the proposed facilities and to transport and deliver up to 200 Mcf of natural gas per day to Alpha Chemical Corporation as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general

terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.; TEXACO INC., DOCKET NO. G–16994, ET AL.; PHILLIPS PETROLEUM COMPANY, DOCKET NO. G–16611, ET AL.; PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. G–16946, ET AL.

ORDER DENYING APPLICATIONS FOR RECONSIDERATION AND REHEARING

(Issued April 2, 1963)

On March 6, 1963, Texaco Inc. (Texaco) filed an application for rehearing and reconsideration of the Commission's denial of Texaco's request for the production of documents and application for subpoena *duces tecum* and *ad testificandum*. Similar requests were filed by Phillips Petroleum Company (Phillips) and Pan American Petroleum Corporation (Pan American) [1] on March 8, 1963.

Petitioners had filed extensive requests for the productions of books, papers, etc. used by the Commission in determining the initial service rate for Southern Louisiana as set forth in the Commission's *Statement of General Policy No. 61–1*, 24 FPC 818, *First Amendment to the Statement*, 24 FPC 902, and *the Fourth Amendment to the Statement*, 26 FPC 661, and for the issuance of subpoena. By the Commission order issued February 7, 1963, the requests of Petitioners were denied, 29 FPC 273.

Petitioners have set forth no grounds for reconsideration which were not heretofore considered. We made it clear in the February 7 order that the Policy Statement prices are "guideline" prices at which we would exercise our discretion in the absence of protest by intervening parties to certificate sales in a particular area. The Policy Statement did not purport to fix the "in-line" price which the Courts have made clear is, in the absence of a compelling showing to the contrary, to be the public convenience and necessity price fixed after the statutory Section 7 hearing. See *The Atlantic Refining Company* v. *F.P.C.*, 316 F. 2d 677, No. 17, 166, decided March 21, 1963.

The price which is ultimately determined to be the "in-line" price in the proceedings in Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.* will depend upon the evidence in that case.

Petitioners have demonstrated no reason justifying the production of the documents and issuance of a subpoena as requested. Accordingly, it is necessary that the requests be denied.

The Commission orders:

The above-noted requests of Texaco Inc., Phillips Petroleum Company and Pan American Petroleum Corporation for rehearing and reconsideration are denied in all respects.

Commissioner Ross *not participating.*

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[1] Pan American requested rehearing.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP63-168

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 3, 1963)

On December 14, 1962, Cities Service Gas Company (Applicant) filed in Docket No. CP63-168 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the sale and delivery of natural gas through such facilities to The Gas Service Company (Gas Service) for resale and distribution in the community of Wentworth, Missouri, and the sale and delivery of natural gas through existing facilities to Gas Service for resale and distribution in the communities of Buckner and Turney, Missouri, all as more fully set forth in the application on file with the Commission.

Specifically, Applicant proposes:

(1) To tap its existing Springfield 16-inch pipeline and construct a meter setting with appurtenant regulator equipment at a point in Newton County, Missouri, and to sell gas to Gas Service for resale and distribution in Wentworth, and environs, and,

(2) To sell natural gas to Gas Service for resale in Buckner and Turney, Missouri, and environs, through Applicant's existing facilities used for the sale of gas to Gas Service for resale in Kansas City, Missouri.

The application shows the following estimated third year peak day and annual natural gas requirements for the three communities:

Cities	Mcf at 14.73 psia	
	Peak day	Annual
Wentworth	64	6,100
Buckner	750	57,900
Turney	115	9,330

Applicant states that the estimated cost of the proposed facilities required for service to Wentworth is $1,630, which cost will be financed out of treasury cash.

Gas Service will construct and operate transmission and distribution facilities necessary to render service to the three communities.

The application indicates that Gas Service has received appropriate authorization from The Missouri Public Service Commission and has obtained franchises from the three communities.

Applicant will make the proposed sales pursuant to its FPC Gas Rate Schedules F-2, C-2 and I-2.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 26, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of

the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sales of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP60-69

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 3, 1963)

On March 28, 1960, Colorado Interstate Gas Company (Applicant) filed in Docket No. CP60-69 an application pursuant to Section 7(c) of the Natural Gas Act authorizing the operation of certain existing facilities in order to receive gas from Shell Oil Company (Shell) produced by Shell in the Prairie Dog Field, Baca County, Colorado, all as more fully set forth in the application on file with the Commission.

Applicant states that it has constructed approximately 10,900 feet of 4-inch lateral line and a purchase meter station in Baca County in order to receive the gas from Shell, and that it has been selling such gas in intrastate commerce. Applicant states further that it now proposes to transport and sell the subject gas in interstate commerce, and, therefore, seeks authorization herein to operate its existing facilities to receive gas for that purpose.

The cost of the subject facilities was approximately $26,000, which cost was financed from current working funds.

By letter, dated August 10, 1960, Applicant was granted a temporary certificate to operate the existing facilities.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 26, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of June 5, 1945, in Docket No. G-294 (4 FPC 936).

(2) The existing facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the operation thereof by Applicant is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The operation of the existing facilities by Applicant is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Colorado Interstate Gas Company, to operate the existing facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP63-133

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued April 3, 1963)

On November 16, 1962, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP63-133 an application pursuant to Section 7(b) of the Natural Gas Act for authority to abandon 22,114 feet of 10-inch pipeline and 1,958 feet of 4-inch pipeline known as the "Craig Lateral."

Applicant states that this "Craig Lateral" served as a means of transportation of natural gas purchased by Applicant in the Craig Field from producers there; but due to the steady decline of deliveries of gas because of dwindling reserves, deliveries ceased in September 1960 and the line has since been inactive. There appears to be no possibility of future use of these pipeline facilities.

Applicant proposes to salvage the pipe and hold it for future use at other locations or resell it. The net salvage value is estimated to be approximately $63,813.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 18, 1963 respecting the matters involved in and the issues presented by the application. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a "natural-gas company" within the meaning of the Natural Gas Act, having been heretofore determined by the Commission in its order of November 29, 1957 (18 FPC 710) wherein the facilities above described were authorized to be constructed.

(2) There is no present need for the pipeline facilities hereinbefore described for the reason given. Therefore, the public convenience and necessity does not require the continued maintenance.

(3) A request made during the public hearing by Staff Counsel for the omission of the intermediate decision procedure under Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure was unopposed by any party of record, and not having been denied by the Commission is granted pursuant to said Section 1.30(c) (1) of the rules.

The Commission orders:

(A) Applicant be and is hereby permitted to abandon and to salvage the facilities heretofore described, as more fully described in the application.

(B) Applicant shall advise the Commission in writing of the date of the removal of the facilities within ten days thereafter.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP63-143

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 3, 1963)

On November 23, 1962, Transwestern Pipeline Company (Applicant) filed in Docket No. CP63-143 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a tap valve on its transmission line in Curry County, New Mexico, and the transportation and sale of surplus natural gas, on an interruptible basis, to Southern Union Gas Company (Southern) for resale through Southern's distribution facilities in Portales, New Mexico, all as more fully set forth in the application on file with the Commission.

The application indicates that Southern will use the gas to maintain adequate service to its customers and to supplement its other supply sources to prevent curtailments.

The subject sale will be made pursuant to an agreement between Applicant and Southern, dated September 6, 1962. Said agreement provides for a term extending to and including September 30, 1964.

The application shows the deliveries of natural gas for the first and second years to be approximately 73,000 Mcf and 75,000 Mcf, respectively. Estimated peak day deliveries are shown to be up to 5,000 Mcf.

The estimated cost of Applicant's proposed facilities is $1,245.

By letter, dated December 13, 1962, Applicant was issued a temporary certificate to construct facilities and to serve Southern.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 26, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 10, 1959, in Docket No. G–14871, *et al.* (22 FPC 391).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record, and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transwestern Pipeline Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

THE ALBANY OIL AND GAS COMPANY, INC., DOCKET NO. CP63–164

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued April 4, 1963)

On December 10, 1962, The Albany Oil and Gas Company, Inc. (Applicant) filed in Docket No. CP63–164 an application pursuant to Section 7(a) of the

Natural Gas Act for an order of the Commission directing The Ohio Fuel Gas Company (Ohio Fuel) to establish physical connection of its transmission facilities with the proposed facilities of and to sell natural gas to Applicant for resale and distribution in the unincorporated communities of Hocking and Carbondale, Waterloo Township, Athens County, Ohio, all as more fully set forth in the application.

Applicant proposes to construct and operate the necessary distribution facilities to provide the proposed service, as well as a short lateral pipeline connecting said proposed distribution system with the transmission facilities of Ohio Fuel.

Applicant's estimated third year peak day natural gas requirements are 45 Mcf for three communities.

The total estimated cost of the subject facilities required for the project is $3,184, which cost will be financed by customer contributions and cash on hand.

On January 9, 1963, Ohio Fuel filed an answer to the subject application stating that it has no objection to the requested Commission order.

Applicant's proposed project was approved by the Public Utilities Commission of Ohio.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on February 20, 1963 (28 F.R. 1600). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) The Ohio Fuel Gas Company, an Ohio corporation having its principal place of business in Columbus, Ohio, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 21, 1945, in Docket No. G–371 (4 FPC 1033).

(2) Applicant, The Albany Oil and Gas Company, Inc., is a public utility duly organized and existing under the laws of the State of Ohio and authorized to engage in the business of distributing and selling natural gas within said State.

(3) It is necessary and desirable in the public interest that Ohio Fuel be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver natural gas to Applicant for these communities as set forth in the application and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Ohio Fuel within one year from the date of issuance of this order.

(5) The requirement that Ohio Fuel serve Applicant, as proposed, will not place any undue burden upon Ohio Fuel nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) The Ohio Fuel Gas Company be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver natural gas to Applicant, all as hereinbefore described and as more fully set forth in the application.

(B) Applicant shall be prepared to receive natural gas from Ohio Fuel within one year from the date of issuance of this order.

(C) Ohio Fuel shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP63-103

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued April 4, 1963)

On October 22, 1962, Cities Service Gas Company (Applicant) filed in Docket No. CP63-103 an application pursuant to Section 7 of the Natural Gas Act for permission and approval to abandon certain facilities by sale or by retirement and for a certificate of public convenience and necessity authorizing the construction and operation of certain other facilities, all as more fully set forth in the application.

Applicant proposes to abandon and construct and operate the following facilities all in the vicinity of Wichita, Kansas:

(A) Construct a new town border meter together with regulator and appurtenant facilities;

(B) Abandon by sale to The Gas Service Company (Gas Service) approximately 17,442 feet of 10-inch pipeline; approximately 835 feet of 3-inch pipeline; approximately 5,308 feet of 6-inch pipeline; approximately 3,032 feet of 2-inch pipeline, and approximately 805 feet of 4-inch pipeline; with appurtenant meter and regulator facilities;

(C) To abandon by sale to Kansas Gas Supply Corporation (Supply) approximately 13,892 feet of 10-inch pipeline; approximately 14,792 feet of 16-inch pipeline; approximately 380 feet of 12-inch pipeline, and approximately 8,308 feet of 4-inch pipeline; with appurtenant meter and regulator facilities, and,

(D) Abandon and reclaim Applicant's Hydraulic town border meter and regulator facilities.

Applicant states that the estimated cost of the proposed facilities to be constructed is $22,200, which cost will be financed from treasury cash. The estimated cost of reclaiming facilities is $1,300, with a salvage credit of $14,450. The facilities to be sold to Gas Service will be sold for $39,337, and the facilities to be sold to Supply will be sold for $80,567.

Applicant states further that the proposed realignment of properties stems from its policy of disposing of pipeline facilities in residential or commercial areas, where possible, to the local distribution company, resulting generally in the elimination of expensive maintenance, operation and relocation work.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 19, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas

company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) The facilities to be abandoned, as heretofore described, are subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(5) Such abandonment by Applicant, as heretofore described, is permitted by the public convenience and necessity, and an order authorizing and approving same should be issued as hereinafter ordered.

(6) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to construct and operate the proposed facilities, as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragaph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

(D) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application in this proceeding, be and the same is hereby granted.

(E) Applicant shall advise the Commission of the date of the abandonment within 20 days of the date thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP63–28

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 4, 1963)

On January 18, 1963, Kansas-Nebraska Natural Gas Company, Inc. (Applicant) filed in Docket No. CP63–28 an application to amend the Commission's order issued December 10, 1962, in Docket No. CP63–28 wherein Applicant was authorized, among other things, to install an additional 2500 horsepower compressor at its Scott City, Kansas, compressor station, to reclaim two 500 horsepower compressors at Scott City and to install one of said 500 horsepower compressors at its Colby, Kansas compressor station.

Applicant requests herein that the subject order be amended to authorize Applicant to supercharge the two units which were to have been reclaimed at the Scott City station and to convert the cylinder heads to high compression on four other units at said station, and to install a 1000 horsepower gas turbine unit at the Colby station, all in lieu of the authorizations set forth in the foregoing paragraph.

Applicant states that, after making a thorough investigation of compressor engines and other methods of increasing horsepower at the aforementioned stations, the proposals set forth in the application to amend were found to be more economical than the operations heretofore authorized in the subject order.

Applicant further states that as a result of the requested changes in the original authorization, the total cost of facilities will be reduced by $213,900.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on February 27, 1963 (28 F.R. 1816). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued December 10, 1962, in Docket No. CP63–28 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued December 10, 1962, in Docket No. CP63–28 be and the same is hereby amended to authorize Kansas-Nebraska Natural Gas Company, Inc., to supercharge two units and to convert the cylinder heads to high compression on four other units at the Scott City, Kansas, compressor station and to install a 1000 horsepower gas turbine unit at Colby, Kansas, compressor station in lieu of the existing authorization in said order to install 2500 horsepower at Scott City, Kansas, compressor station, to reclaim two 500 horsepower compressors at Scott City and to install one 500 horsepower unit at Colby, Kansas, compressor station, all as hereinbefore described and as set forth in the subject application.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CITY OF MONTICELLO, GEORGIA, DOCKET NO. CP63-156

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALES OF NATURAL GAS

(Issued April 4, 1963)

On December 5, 1962, (supplemented on January 15, and 28, 1963) the City of Monticello, Georgia (Applicant), filed in Docket No. CP63-156 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Southern Natural Gas Company (Respondent) to establish physical connection of its facilities with the facilities consisting of a gas distribution system which Applicant proposes to construct and operate and to sell and deliver natural gas to Applicant for resale and distribution to consumers in the said City and environs, all as more fully set forth in the application.

Applicant proposes to construct and operate a distribution pipeline system in the City of Monticello and its environs with connecting line to the point of interconnection with Southern Natural Gas Company's pipeline transmission system.

Applicant shows that the volume of natural gas required to meet its demands is approximately 107,985 Mcf upon the annual basis.

On December 31, 1962 Respondent filed its answer to the subject application stating therein that it consents to the granting of the application under Section 7(a) of the Natural Gas Act.

Notice of the filing of the application was issued on February 14, 1963 and was published in the Federal Register on February 22, 1963 (28 F.R. 1749). No protest, requests for hearing, or petition to intervene has been received.

The Commission finds:

(1) Applicant City of Monticello, Georgia, is a municipal corporation organized and existing under the laws of the State of Georgia and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas within its boundaries and the adjoining environs.

(2) Respondent, Southern Natural Gas Company, a Delaware corporation with its principal place of business in Birmingham, Alabama, is a "natural gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 6, 1942 in Docket No. G-296 (3 FPC 822).

(3) It is necessary and desirable in the public interest to direct Southern Natural Gas Company to establish physical connection of its facilities with the facilities proposed to be constructed and operated by the Applicant as hereinbefore described, all as more fully described in the application and to sell and deliver to it volumes of natural gas not to exceed 107,985 Mcf per year and not to exceed 1106 Mcf on peak days.

(4) Applicant should undertake forthwith to begin its construction of the proposed facilities and to commence taking natural gas from the Respondent within one year from the date of issuance of this order.

The Commission orders:

(A) Southern Natural Gas Company be and it is hereby directed to establish physical connection of its transmission facilities with the facilities to be constructed and operated by Applicant as hereinbefore described, together with such

metering, regulating and appurtenant facilities as may be required therefor, and to deliver and sell natural gas in volumes required but not to exceed 1106 Mcf per day and 107,985 Mcf in any year.

(B) Applicant shall commence the purchase of gas from the Respondent within one year from the date of issuance of this order.

(C) Respondent shall report to the Commission in writing the date of commencement of service to the Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP63–199

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued April 4, 1963)

On January 11, 1963, Southern Natural Gas Company (Applicant) filed in Docket No. CP63–199 an application pursuant to Section 7(b) of the Natural Gas Act for authority to abandon its facilities known as the Millhaven Supply Line consisting of approximately 19.083 miles of 8⅝ inch pipeline extending from the Millhaven Gas Field in Quachita Parish, to Applicants North Line near its Perryville Compressor Station in the said Quachita Parish.

Applicant states that the pipeline facility above described is not used or needed because of the depletion of the gas supply from the Millhaven Gas Field. No service by Applicant will be discontinued or diminished because of the abandonment of facilities.

Approximately 3.84 miles of pipeline extending from the gas field to the Millhaven Dehydration Plant site will not be salvaged because of internal corrosion in the pipe renders it valueless, but Applicant proposes to remove the remaining 15¼ miles of pipe and place it in storage for future use.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 26, 1963, respecting the matters involved in and issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff Counsel moved orally at the hearing that the intermediate decision procedure be omitted and the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a natural gas company within the meaning of the Natural Gas Act and the facilities described herein above were authorized by the Commission in Docket No. G–1676 on September 4, 1952 (11 FPC 1262), and are subject to the jurisdiction of the Commission.

(2) The available supply of natural gas from the well to which the facilities are attached has become so depleted as to render further service therefrom unwarranted so that the present and future public convenience and necessity permits abandonment thereof.

(3) A request during the public hearing by Staff Counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Applicant be and is hereby permitted to abandon and remove the facilities heretofore described, as more fully described in the application.

(B) Applicant shall within ten days after removal of the said facilities from their emplacement advise the Commission thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNITED GAS PIPE LINE COMPANY AND TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP63–181

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 4, 1963)

On December 26, 1962, United Gas Pipe Line Company and Tennessee Gas Transmission Company (Applicants) filed in Docket No. CP63–181 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas through existing and proposed interconnections between the facilities of the Applicants, all as more fully described in the joint application.

Applicants seek authorization to install and operate metering and interconnecting facilities where United's 30-inch Refugio to Perryville pipeline intersects with Tennessee's 30-inch mainline near Louetta, Harris County, Texas, and where United's 30-inch Bayou Terrebonne Junction to Mobile line intersects Tennessee's 30-inch mainline near Chauncey, Hancock County, Mississippi. There presently exists an interconnection where United's 18-inch pipeline connects with the pipeline facilities of Tennessee at Tennessee's Compressor Station No. 47 near West Monroe, Ouachita Parish, Louisiana. Applicants submit that the exchange of gas will provide added flexibility of operation and continuity of service.

The total cost of the proposed facilities will not exceed a maximum of $52,893 under which Tennessee Gas Transmission Company will expend $25,080, and United Gas Pipe Line Company will expend $27,813. The application states that the proposed facilities will be financed by the respective companies from cash on hand.

The proposed facilities will not be used to change existing services, nor will they affect presently filed rates.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 19, 1963, respecting the matters involved in and the issues presented by the joint application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicants, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, and Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, are "natural-gas companies" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the joint application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicants are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicants are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity requires that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicants, United Gas Pipe Line Company and Tennessee Gas Transmission Company, to exchange natural gas at existing and proposed points of interconnection between the facilities of said Applicants, all for the period and as otherwise more fully described in the joint application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the National Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP63-189

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued April 4, 1963)

On December 31, 1962, United Gas Pipe Line Company (Applicant) filed in Docket No. CP63-189 an application pursuant to Section 7(b) of the Natural Gas Act for authority to abandon and remove the following described facilities:

A positive meter and regulator station and appurtenant facilities serving Garrett Oil Tool, Inc., (now Axelson-Garrett, Division of U.S. Industries, Inc.) located in the Alexander Jorden Survey, Abstract 360, Harrison County, Texas.

737-369—64——48

Applicant states that it has been selling natural gas to the Garrett Oil Tool, Inc., at its plant above described, thru the facilities, but that its sales contract expired on January 1, 1963, and the customer no longer desires gas service. No other customer is being served by use of the said facilities.

Applicant proposes to remove the facilities from the present site and use them elsewhere in its operations when required.

The Commission finds:

(1) Applicant is a natural gas company within the meaning of the Natural Gas Act and the facilities above described are a part of the Applicant's interstate pipeline system and subject to the jurisdiction of the Commission.

(2) The contract for gas service through the facilities described, expired on January 1, 1963, and the only customer served with gas notified Applicant that it did not desire any further service as per letter dated October 22, 1962 (Exhibit X–1) of the application. Therefore the public convenience and necessity does not require the maintenance or operation thereof.

(3) The dismantling and removal of these facilities from their present site for salvage or other uses will not affect public convenience and necessity.

(4) A request made during the public hearing by Staff Counsel for the omission of the intermediate decision procedure under Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure was unopposed by any party of record, and not having been denied by the Commission is granted pursuant to Section 1.30(c)(1) of the said rules.

The Commission orders:

(A) Applicant be and is hereby permitted to abandon, dismantle and remove the facilities heretofore described, as more fully described in the application.

(B) Applicant shall advise the Commission of the date of removal of the facilities within 10 days thereafter.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

CONNECTICUT LIGHT AND POWER COMPANY AND MYSTIC POWER COMPANY, DOCKET NO. E–7082

ORDER AUTHORIZING SALE, ACQUISITION AND MERGER OR CONSOLIDATION OF FACILITIES

(Issued April 5, 1963)

The Connecticut Light and Power Company (CL&P), incorporated under the laws of the State of Connecticut and doing business in that State, with its principal business office at Berlin, Connecticut, and the Mystic Power Company (Mystic) also organized and doing business in Connecticut with its principal office at Mystic, Connecticut, filed a joint application on February 12, 1963, requesting authorization, pursuant to Section 203 of the Federal Power Act, for CL&P to acquire all the existing facilities of Mystic and authorization for the latter company to sell all of its facilities to CL&P.

CL&P, the largest electric and gas utility in Connecticut, is engaged in the production, purchase, transmission, distribution and sale of electricity and in the production, purchase, reforming, distribution and sale of gas. The Company supplies electric service in 115 of the 169 towns in Connecticut and gas service

in 35 towns. The Company had net plant of $367,880,000 as of December 31, 1962, and it received total revenues of $105,900,000 in the year 1962.

Mystic, a wholly owned subsidiary of the New England Electric System (NEES), a Massachusetts voluntary association, is engaged in the purchase, transmission, distribution and sale of electricity serving the Town of Stonington and portions of the Towns of Groton, Ledyard and North Stonington in New London County, Connecticut. The Company had a net plant of $2,650,000 as of December 31, 1962 and it received revenues of $1,590,000 in the year 1962.

CL&P and Mystic entered into an agreement on January 25, 1963, for the purchase by CL&P and the sale by Mystic of all of its facilities. According to the agreement, the transfer of the properties will be in consideration of: (a) the payment of $3,200,000 in cash by CL&P, (b) plus or minus, as the case may be, the amount by which the net book cost of Mystic's physical property exceeds or is less than $2,643,449.47 (the net book cost of said property at December 31, 1962) at the time of transfer, and (c) plus an amount for accounts receivable at the time of transfer. The application states that the terms of purchase were negotiated by the two parties at arm's-length.

CL&P, as of December 31, 1962, would have paid a total consideration of $3,428,026 for the following assets and related liabilities of Mystic:

Assets

Electric plant (original cost)	$3,037,067
Accumulated provision for depreciation	(385,743)
Net electric plant	2,651,324
Nonutility property	2,634
Notes and accounts receivable	259,546
Total assets	2,913,504

Liabilities

Customer deposits	19,205
Customers advances for construction	12,315
Contributions in aid of construction	10,508
Total liabilities	42,028
Net assets	2,871,476

CL&P's total consideration of $3,428,026 as of December 31, 1962, would have been $556,550 in excess of the $2,871,476 book cost of net assets acquired. Therefore, CL&P's purchase of Mystic's properties will result in the creation of an electric plant acquisition adjustment of $556,550 which the acquiring company proposes to eliminate in its entirety by a debit to Account 216, Unappropriated Earned Surplus.

Mystic has no generating facilities and purchases all of its electric energy requirements from its affiliate in the NEES, The Narragansett Electric Company (Narragansett). The energy is received at the Connecticut-Rhode Island State boundary over two 34.5 kv transmission lines, one 12.47 kv transmission line, and over several 4.16 kv and 2.4 kv distribution circuits. The two 34.5 kv lines totaling 18.77 miles in length, extend over separate routes from the state boundary to Mystic, Connecticut, and form a loop which is closed at the Westerly, Rhode Island substation of Narragansett.

The application indicates that the increasing load in Mystic's service area is exhausting the existing transmission capacity which connects Mystic to its purchased generation supply. It is apparent from the application and from the additional information requested from the company and dated February 27, 1963, that additional transmission facilities will be needed and that costs of additional transmission would be lower if the load were connected to the facilities of CL&P due to the location of Mystic in relation to the two sources of supply. According to the application, CL&P expects and has contracted to have completed by March 31, 1964, the construction of a new 69 kv, single circuit transmission line from a point on its Montville-Groton 69 kv transmission line to Mystic's existing substation in the Village of Mystic. Since CL&P already serves the areas to the north of Mystic, it will be able to consolidate the Mystic properties with its existing properties and operate them together at a lower cost than Mystic's present cost. It is also noted that CL&P's average energy cost is lower than the present cost of energy to Mystic. CL&P represented in a letter to the Commission dated February 26, 1963, that Mystic's customers will be offered the opportunity of being served with the lower CL&P rates. According to information in the letter residential customers with water heating service and commercial and industrial customers are the only classes of customers which might receive a higher bill under CL&P rates and these will be billed at the former Mystic rate as long as they remain at the same locations. CL&P estimates that the substitution of CL&P rates will result in an aggregate reduction of customer bills of approximately $50,000 a year. The rate reduction will affect most of the customers.

Upon completion of the proposed acquisition of facilities, according to the application, Mystic proposes to use the proceeds, together with other funds, to pay all of its unsecured notes payable then outstanding, together with its other liabilities and also to pay a partial dividend in liquidation to its sole stockholder, NEES. Subsequent to the sale, Mystic expects that it will be able to pay a final dividend within approximately nine months after the time of transfer, although final dissolution of Mystic may not be possible until sometime during 1964.

Written notice of the application has been given to the Connecticut Public Utilities Commission and to the Governor of that State. Notice of the application was also published in the Federal Register on March 7, 1963 (28 F.R. 2254), stating that any person desiring to be heard or to make any protest with reference to said application should on or before the 22d day of March, 1963 file petitions or protests with the Federal Power Commission, Washington 25, D.C. No petition or protest or request to be heard in opposition to the granting of the application has been received.

By order of February 15, 1963, the Connecticut Public Utilities Commission approved the request of Mystic for authority to sell its facilities and the request of CL&P to acquire the facilities of Mystic.

The Commission finds:

(1) Applicant Connecticut Light and Power Company, a corporation, is a "public utility" within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued April 27, 1961, *Connecticut Light and Power Company, et al.*, Docket No. E–6986 (25 FPC 782).

(2) Applicant Mystic is the owner of facilities for the transmission of electric energy generated in Rhode Island and consumed in Connecticut which facilities are in addition to, and do not include, facilities used for the generation of electric

energy or facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter. Mystic Power Company is, therefore, a public utility within the meaning of that term as used in Section 203 of the Federal Power Act.

(3) By the proposed transaction, as described above, Connecticut Light and Power Company will acquire and merge or consolidate with its facilities, subject to the jurisdiction of the Commission all of the facilities of the Mystic Power Company, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act, and the Mystic Power Company will dispose of all of its facilities to the Connecticut Light and Power Company within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(4) The proposed acquisition of Mystic's facilities by CL&P, and the proposed disposal of such facilities by Mystic, as described above, upon the terms and conditions specified in the application and subject to the provisions of this order will be consistent with the public interest, as expressed in Section 203 of the Act, for the reasons set forth in the recital above.

The Commission orders:

(A) The proposed acquisition and merger or consolidation of the facilities of the Mystic Power Company by the Connecticut Light and Power Company, and the proposed disposition of all of its facilities by Mystic, all as described above, is hereby authorized and approved upon the terms and conditions set forth in the application, subject to the provisions of this order.

(B) CL&P shall record the transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees. CL&P shall dispose of the Electric Plant Acquisition Adjustment from the proposed transaction by a charge to Account 216, Unappropriated Earned Surplus.

(C) This authorization shall expire unless the transaction herein authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations estimates or determinations of costs, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

OTTER TAIL POWER COMPANY, DOCKET NO. E-7083

ORDER AUTHORIZING ISSUANCE OF COMMON STOCK

(Issued April 8, 1963)

Otter Tail Power Company (Applicant), incorporated under the laws of the State of Minnesota and doing business as a qualified foreign corporation in the States of North Dakota and South Datoka, with its principal place of business at Fergus Falls, Minnesota, filed an application on February 28, 1963, as subsequently supplemented, for an order, pursuant to Section 204 of the Federal Power Act, authorizing the issuance of additional shares of Common Stock, par

value $5 per share, for a 2-for-1 split of the outstanding Common Stock of Applicant.

Applicant had outstanding on December 31, 1962 a total of 958,631 shares of Common Stock, par value $5 per share, and on that date Applicant reserved a total of 8,000 additional shares of Common Stock for issuance upon conversion of its outstanding $196,400 principal amount of 5¼% Convertible Debentures due 1967. Applicant proposes to issue on June 1, 1963 one additional share of its Common Stock, par value $5 per share, for each share of Common Stock of Applicant outstanding of record at the close of business on May 15, 1963, including any shares issued prior to such time as a result of conversion of any of the above-mentioned Convertible Debentures. Those Convertible Debentures not converted prior to the close of business on May 15, 1963 will thereafter be convertible at a rate double the conversion rate which would otherwise be in effect. In the event that all Convertible Debentures of Applicant are converted into Common Stock prior to the close of business on May 15, 1963, there will be a total of 966,631 shares of Applicant's Common Stock outstanding at that time. Therefore Applicant will issue to holders of its outstanding Common Stock of record on the aforementioned record date a maximum of 966,631 additional shares of Common Stock in connection with the proposed transaction.

Applicant represents that for each share of Common Stock issued by it to effect the proposed stock split, there will be transferred from Applicant's Premium on Common Stock capital account to its Common Stock capital account the sum of $5, which will be the par value of each share of Common Stock so issued. Applicant also represents that it will not receive any proceeds from the proposed issuance of Common Stock.

According to the application, the proposed split of Applicant's Common Stock will result in a wider distribution of its shares and in greater market stability for its shares and in a better and wider market for any additional Common Stock or convertible debt obligations which Applicant may be required to issue from time to time to finance its construction programs.

Written notice of the application has been given to the Railroad and Warehouse Commission of Minnesota, the Public Service Commission of North Dakota, and the Public Utilities Commission of South Dakota and to the Governor of each of those States. Notice of the application was also published in the Federal Register on March 15, 1963 (28 F.R. 2543), stating that any person desiring to be heard or to make any protest with reference to said application should on or before March 29, 1963 file with the Federal Power Commission, Washington 25, D. C., petitions or protests. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Public Service Commission of North Dakota, by order dated March 6, 1963, authorized Applicant to issue additional shares of Common Stock in the manner and for the purposes as described above.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued October 25, 1957, *Otter Tail Power Company*, Docket No. E-6776 (18 FPC 538).

(2) The proposed issuance of Common Stock, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act, and the proposed issuance of Com-

mon Stock, as described above, is therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance of Common Stock, as described above, is exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of Paragraph 34.1a(a)(1) thereof.

(5) The proposed issuance of Common Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

(6) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance of Common Stock, as described above, upon the terms and conditions and for the purposes specified in the application, is hereby authorized, subject to the provisions of this order.

(B) This authorization shall expire unless the transaction hereby authorized is consummated within 60 days from the date of issuance of this order.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of costs, or any other matter whatsoever which is now pending or which hereafter may come before this Commission or any other regulatory body.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

KERR-MCGEE OIL INDUSTRIES, INC., DOCKET NO. CI63-923

ORDER DENYING APPLICATION FOR REHEARING

(Issued April 9, 1963)

On March 7, 1963, Kerr-McGee Oil Industries, Inc. (Kerr-McGee) filed an application for rehearing of the Commission's letter order of February 19, 1963 which rejected Kerr-McGee's January 28, 1963 application for a certificate of public convenience and necessity to sell natural gas for resale to Colorado Interstate Gas Company because the contract executed on December 6, 1962 providing for the sale (the proposed rate schedule) contains pricing provisions other than those permitted by Section 154.93, as amended, of the Commission's Regulations under the Natural Gas Act (Act). No request for waiver has been filed pursuant to Section 1.7 of the Rules of Practice and Procedure.[1]

For each five-year period after October 1, 1983, the contract calls for "the establishment of the fair market price for the sale of gas hereunder * * *" by considering, among other things, prices in agreements "which at that time have been recently negotiated or renegotiated." It seems evident therefore, that Para-

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[1] Section 1.7 was amended and clarified by our Order No. 255 issued September 20, 1962, 28 FPC 500.

graph 5.1 of the contract would permit a price redetermination based upon producer rates which are then in issue in suspension or certificate proceedings—a procedure clearly prohibited by Section 154.93. Kerr-McGee does not contend that Paragraph 5.1 comes within Section 154.93 and apparently did not draft it in order to meet the requirements of the Section. In essence Kerr-McGee attacks Section 154.93 as amended by Commission orders Nos. 232, 232A and 242 (Issued March 3 and 31, 1961, and February 8, 1962, respectively), as invalid because it is without reasonable basis in law and fact and goes beyond the powers granted to the Commission by the Act. However, Kerr-McGee presents no arguments that were not fully considered by the Commission when it issued the above-mentioned orders.

The Commission finds:

The assignments of error and grounds for rehearing set forth in Kerr-McGee's application present no new facts or principles of law which were not considered by the Commission when it issued its letter order of February 19, 1963, or which having now been considered, warrant any change or modification of the order.

The Commission orders:

The application for rehearing filed by Kerr-McGee on March 7, 1963, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

THE OHIO FUEL GAS COMPANY, DOCKET NO. CP63-161

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 9, 1963)

On December 7, 1962, The Ohio Fuel Gas Company (Applicant) filed an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to construct and operate approximately 14.8 miles of 20-inch pipe line looping part of Line L-2121 extending from Pavonia Compressor Station northward in Richland and Ashland Counties, Ohio, together with fittings valves and incidentals necessary to enable Applicant to operate the facility for the purpose of maintaining adequate storage input in the Wellington Storage Area during the summer of 1963 and thereafter. The natural gas so transported for storage will serve the Applicant's increasing market requirements along Lake Erie during the winter of 1963-1964 and thereafter.

The estimated total cost of the proposed facilities is $1,000,000, the funds for which are to be supplied by the Applicant's parent company, The Columbia Gas System Inc.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 19, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, The Ohio Fuel Gas Company, an Ohio corporation having its principal place of business in Columbus, Ohio, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 21, 1945, in Docket No. G-371 (4 FPC 1033).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities, as hereinbefore described, are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.29 of said Regulations, and that the construction of the facilities authorized by this order should be completed and said facilities placed in actual operation within six months from the date on which this order issues.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing The Ohio Fuel Gas Company to construct and operate the facilities hereinbefore described, all as more fully described in the application in this proceeding.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

(C) The construction of the facilities authorized by this order shall be completed and said facilities shall be placed in actual operation within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CARNEGIE NATURAL GAS COMPANY, DOCKET NO. CP63-61

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 10, 1963)

On September 10, 1962, as supplemented on November 5, 1962, and as amended on February 1, 1963, Carnegie Natural Gas Company (Applicant) filed in Docket No. CP63-61 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the relocation of a meter station and related appurtenances from a point in Liberty District, Marshall County, West Virginia, to a point in Springhill Township, Greene County,

Pennsylvania, all as more fully represented in the application in this proceeding.

Applicant has arranged its facilities so that natural gas formerly furnished at the West Virginia location by Manufacturers Light and Heat Company, for the account of United States Steel Corporation, will now be delivered at a point in Springhill Township, Greene County, Pennsylvania and transported from there to points of use in Allegheny County, Pennsylvania. This relocation was due to the highly inaccessible site of the West Virginia facilities in addition to the fact that the design of that installation and piping did not meet the requirements of the pertinent ASA Code.

Pursuant to due notice, a public hearing was held in Washington, D.C., on April 2, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Carnegie Natural Gas Company, having its principal place of business at 3904 Main Street, Munhall, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction, relocation and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction, relocation and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefore should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Carnegie Natural Gas Company, to relocate a meter station and related appurtenances from a point in Liberty District, Marshall County, West Virginia, to a point in Springhill Township, Greene County, Pennsylvania, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(4), and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

HIGH PLAINS NATURAL GAS COMPANY, DOCKET NO. CP63-226

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 10, 1963)

On February 14, 1963, High Plains Natural Gas Company (Applicant) filed in Docket No. CP63-226 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition and operation of all of the facilities of Public Service Corporation of Texas (Public Service) and to perform all acts and services now being made by Public Service, to the extent that such facilities, acts, services and sales are subject to the jurisdiction of the Commission, all as more fully set forth in the application on file with the Commission.

Applicant states that it has no gas producing properties, pipelines, or distribution systems at the present time.

The application indicates that Public Service owns and operates a 212 mile natural gas transmission system extending from Woodward and Ellis Counties, Oklahoma, through Lipscomb, Ford, Ochiltree, Hemphill and Wheeler Counties, Texas. Through these facilities and some 57 miles of distribution facilities, Public Service sells gas at retail in seven communities in Texas and three communities in Oklahoma. Public Service also sells gas for resale in Perryton and Spearman, Texas, and Supply, Oklahoma.

The application shows that all of the stock of Public Service will be purchased by Applicant's parent, High Plains Gas Company (High Plains), for approximately $1,750,000. Public Service will be dissolved and all of its physical assets transferred by High Plains to Applicant, in return for 399,000 shares of Applicant's stock. Applicant will pay High Plains approximately $100,000 for the accounts receivable of Public Service, and High Plains will then be dissolved and Applicant's stock will be distributed to High Plain's stockholders.

Applicant states that it will continue the same service presently rendered by Public Service. Further, on February 14, 1963, Applicant filed a certificate of adoption of, and makes its own in every respect, Public Service's FPC Gas Tariff Original Volume No. 1.

The docket number of the outstanding certificate authorization heretofore granted to Public Service by the Commission, in which Applicant's name is to be substituted for that of Public Service, is G-344.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 27, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, High Plains Natural Gas Company, a Texas corporation having its principal place of business in Dallas, Texas, upon the acquisition and the commencement of operation of the facilities for which authorization is requested

herein, will be engaged in the transportation and sale of natural gas in interstate commerce and will be, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The facilities proposed to be acquired and operated by Applicant, as hereinbefore described and as more fully described in the application in this proceeding, will be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the acquisition and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The acquisition and operation of the facilities and the transportation and sale of natural gas therefrom, as proposed by Applicant, are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (d) and (e) of Section 157.20 of such Regulations.

(6) The name of High Plains Natural Gas Company should be substituted for that of Public Service Corporation of Texas in the certificate authorization heretofore granted to Public Service by this Commission in Docket No. G–344.

(7) The certificate of public convenience and necessity hereinafter issued to Applicant should be conditioned upon Applicant obtaining appropriate authorization from the Corporation Commission of Oklahoma.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, High Plains Natural Gas Company, to acquire and operate the facilities and to transport and sell natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (d) and (e) of Section 157.20 of such Regulations.

(C) The name of High Plains Natural Gas Company be and is hereby substituted for that of Public Service Corporation of Texas in the certificate authorization heretofore granted to Public Service by this Commission in Docket No. G–344.

(D) The acquisition hereinabove authorized shall be consummated and operation begun by Applicant within 6 months of the date hereof.

(E) The certificate issued in paragraph (A) above shall be and is hereby conditioned upon Applicant obtaining appropriate authorization from the Corporation Commission of Oklahoma.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. RP61-19 AND RP62-7; NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. RP63-6

ORDER DENYING APPEAL FROM RULING OF PRESIDING EXAMINER PRESCRIBING THE ORDER OF PROCEDURE FOR THE DISTRIBUTION AND PRESENTATION OF EVIDENCE

(Issued April 10, 1963)

The National Coal Association, *et al.*,[1] on March 26, 1963, pursuant to Section 1.18(d) of the Commission's Rules of Practice and Procedure, filed a pleading in the above designated consolidated proceeding, entitled "Appeal from Ruling of Presiding Examiner."

The aforementioned Coal Intervenor during hearing on March 22, 1963 requested that the Presiding Examiner follow a procedure for the submission of evidence whereby the cases-in-chief of Midwestern and Natural would be served upon all parties prior to the cases-in-chief of any intervenors, including the Coal Intervenors. This the Presiding Examiner declined to do for the reasons set out at pages 193 through 195 of the Transcript. Rather the Presiding Examiner decided to adopt a plan which requires all Intervenors, including the Coal Intervenors, who oppose the existing rates level or rate design of Midwestern and Natural to submit their cases-in-chief before Midwestern and Natural submit their cases.

Coal Intervenors objected to the Examiner's prescribed schedule and requested that their appeal be certified to the Commission. (Tr. 231) The Examiner denied the request stating "I am going to deny the request because I cannot make the finding required by Section 1.28(a) of the Rules that there are extraordinary circumstances where prompt decision by the Commission in my view would be necessary to prevent detriment to the public interest. However, you can file any motions you may regard as appropriate."

In the afore-mentioned filing of March 26, 1963, the Coal Interests rely as a basis for appeal on Section 1.18(b) of the Commission's Rules of Practice and Procedure, rather than on Section 1.28. Since the order entered by the Examiner on March 22, 1963, appears to be the sort of prehearing order disposing of procedural matters which Section 1.18 contemplates we find that the appeal is properly before us despite the absence of any certification by the Examiner. On consideration of its merits, however, we conclude that the appeal must be denied.

The Coal Interveners state that the schedule prescribed by the Presiding Examiner[2] "shifted the burden of proving the justness and reasonableness of Midwestern's and Natural's rates—to those who would oppose those rates" and therefore denies petitioners "a fair hearing on the question of rate design". A review of the record indicates that the Examiner in prescribing the procedural steps involved in serving prepared testimony gave full recognition to the requirements of due process and the Commission's Rules. We agree with the Examiner that considerations of who may ultimately bear the burden of proof in these proceedings have little bearing on the real problem confronting the Examiner, i.e., establishing a schedule which most nearly balances the needs and conveniences

[1] Other joint intervening parties participation in the filing of the appeal are United Mine Workers of America, Mid-West Coal Producers Institute Inc., Upper Lake Docks Coal Bureau, Inc., and Fuels Research Council, Inc.

[2] Tr. 196–199, and 210–214.

of the parties against the interests of expedition. Moreover, we are satisfied that the Examiner neither departed impermissibly from our order of February 25, 1963, nor abused his discretion in fixing the date of April 11 for the serving of testimony by interveners proposing any change in the status quo. This is particularly true since the Coal Interveners have already received the staff case and will have an opportunity to submit any proper rebuttal to Natural's and Midwestern's case. Because the pendency of this appeal before the Commission for a substantial period may have caused some uncertainty, we think, however, it would be appropriate to modify the Examiner's schedule to the extent of postponing the April 11 serving date until April 18, without affecting any of the subsequent dates fixed by the Examiner.

The Commission orders:

(A) The appeal filed by the National Coal Association, *et al.*, on March 26, 1963, from the Presiding Examiner's ruling is denied.

(B) The date of April 11, 1963, the date on which evidence required by Step 1 of the Examiner's schedule is required to be served, is extended to April 18, 1963. The other dates shall remain unchanged.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP63—184

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 10, 1963)

On December 27, 1962, Southern Natural Gas Company (Applicant) filed in Docket No. CP63–184 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas on an interruptible basis to David C. Crow, d.b.a. Bayou Meadow Farm, for use in operating gas engines for the propulsion of irrigation pumps on Meadow Farm located near Epps, East Carroll Parish, Louisiana, all as more fully set forth in the application.

Applicant proposes to construct a line tap in addition to a metering and regulating station on its north main line at Milepost 38.0. The annual and peak day requirements are estimated to be 8,750 Mcf and 70 Mcf respectively. Such requirements represent a fraction of one percent of the total reserves and demand no additional gas supplies.

The total cost of the proposed facilities will not exceed $1,160 to be financed from cash on hand by Applicant.

Pursuant to due notice a public hearing was held in Washington, D.C., on March 26, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity requires that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) The certificate issued hereinafter should limit construction to a total cost not to exceed a maximum of $1,160.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Southern Natural Gas Company to sell natural gas on an interruptible basis to David C. Crow, d.b.a. Bayou Meadow Farm, for use in operating gas engines for the propulsion of irrigation pumps, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within six months from the date on which this order issues.

(D) The certificate issued by paragraph (A) above is limited to construction at a total cost not to exceed a maximum of $1,160.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TENNESSEE GAS TRANSMISSION COMPANY AND TRUNKLINE GAS COMPANY, DOCKET NO. CP63-173

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 10, 1963)

On December 17, 1962, Tennessee Gas Transmission Company (Tennessee) and Trunkline Gas Company (Trunkline) (sometimes hereinafter referred to jointly

as Applicants) filed in Docket No. CP63–173 a joint application pursuant to Section 7(c) of the Natural Gas Act authorizing the construction and operation to two emergency interconnections between Applicants' pipeline systems and the emergency exchange of natural gas at said proposed interconnections, all as more fully set forth in the joint application on file with the Commission.

The proposed emergency interconnections will be located at the point where Trunkline's 24-inch main line crosses Tennessee's 30-inch main line in Harris County, Texas, and at the intersection of Trunkline's Shaw Compressor Station and Tennessee's 30-inch main line in Bolivar County, Mississippi.

The proposed emergency exchange will be made pursuant to an agreement between Applicants, dated October 25, 1962. Said agreement limits the emergency deliveries to a maximum of 200,000 Mcf per day.

The total estimated cost of the proposed facilities is $49,140, of which Tennessee's share is estimated to be $22,640 and Trunkline's share is estimated to be $26,500. Such cost will be financed by the respective Applicants from cash on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 27, 1963, respecting the matters involved in and the issues presented by the joint application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 12, 1947, in Docket No. G–910 (6 FPC 777).

(2) Applicant, Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G–882 (8 FPC 250).

(3) The facilities hereinbefore described, as more fully described in the joint application in this proceeding, are to be used for the emergency exchange and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission and the construction and operation of such facilities and the emergency exchange and delivery of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities and the proposed emergency exchange and delivery of natural gas by Applicants are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record

and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procdure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicants in this proceeding, jointly, authorizing the construction and operation of the proposed facilities and the proposed emergency exchange and delivery of natural gas as hereinbefore described, all as more fully described in the joint application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP63-194

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 10, 1963)

On January 4, 1963, as supplemented on January 21, 1963, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP63-194 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and sale of an additional 2,000 Mcf of natural gas per day to Pennsylvania Gas and Water Company (Pennsylvania Gas), an existing customer, for a period of one year commencing on December 14, 1962, all as more fully set forth in the application, as supplemented, on file with the Commission.

The application indicates that on December 14, 1962, Pennsylvania Gas experienced a failure of its Scranton, Pennsylvania, manufactured gas holder and that the resulting damage is such that repairs cannot be made for several months, hence, eliminating the use of peak shaving facilities during the 1962-63 winter heating season. Applicant states that the emergency thus created can only be alleviated by the proposed additional sale. Applicant states further that on December 14, 1962, it advised the Commission that, effective on said date, it would make an additional 2,000 Mcf of natural gas per day available to Pennsylvania Gas for a period of one year.

Applicant indicates that the subject service can be rendered with existing facilities and top storage capacity.

The subject sale is to be made pursuant to Applicant's FPC Gas Rate Schedule G-4.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 27, 1963, respecting the matters involved in and the issues presented by the application, as supplemented, herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the

Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order July 12, 1947, in Docket No. G-910 (6 FPC 777).

(2) The subject transportation and sale of natural gas by Applicant hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, is in interstate commerce, subject to the jurisdiction of the Commission, and such transportation and sale are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The subject transportation and sale of natural gas by Applicant is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Tennessee Gas Transmission Company, to transport and sell an additional 2000 Mcf of natural gas per day to Pennsylvania Gas for the period of one year commencing on December 14, 1962, as hereinbefore described, all as more fully described in the application, as supplemented, herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TENNESSEE GAS TRANSMISSION COMPANY AND FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP63-203

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 10, 1963)

On January 14, 1963, Tennessee Gas Transmission Company (Tennessee) and Florida Gas Transmission Company (Florida) (sometimes hereinafter referred

to jointly as Applicants) filed in Docket No. CP63-203 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities necessary for an emergency interconnection between the pipeline systems of Applicants and the emergency exchange of natural gas at said proposed interconnection, all as more fully set forth in the joint application on file with the Commission.

The proposed emergency interconnection will be located at the point where Florida's 24-inch main line crosses Tennessee's 30-inch Delta-Portland Line in Stone County, Mississippi. Applicants have entered into an agreement, dated December 10, 1962, providing for utilization of the proposed interconnection when either company is confronted with an emergency which can be alleviated by deliveries of natural gas from the pipeline of the other. However, such deliveries shall not be in excess of 150,000 Mcf per day. All emergency deliveries will be made on a gas-for-gas exchange basis.

The total estimated cost of all proposed facilities is shown to be $18,300. Of this amount, $10,200 will be shared equally between Applicants and the balance represents the estimated cost for the construction of taps and/or side valves which each company will construct at its own expense. The cost of the proposed facilities will be financed by the respective companies from cash on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 28, 1963, respecting the matters involved in and the issues presented by the joint application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 12, 1947, in Docket No. G-910 (6 FPC 777).

(2) Applicant, Florida Gas Transmission Company, a Delaware corporation having its principal place of business in Winter Park, Florida, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1956, in Docket Nos. G-9262 and G-9960 (16 FPC 118).

(3) The facilities hereinbefore described, as more fully described in the joint application in this proceeding, are to be used for the emergency exchange and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission and the construction and operation of such facilities and the emergency exchange and delivery of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities and the proposed emergency exchange and delivery of natural gas by Applicants are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's com-

pliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicants in this proceeding, jointly, authorizing the construction and operation of the proposed facilities and the proposed emergency exchange and delivery of natural gas as hereinbefore described, all as more fully described in the joint application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.; THE ATLANTIC REFINING COMPANY, DOCKET NO. CI62–146; CONTINENTAL OIL COMPANY, DOCKET NO. CI62–147; CITIES SERVICE PRODUCTION COMPANY, DOCKET NO. CI62–135; TIDEWATER OIL COMPANY, DOCKET NO. CI62–137

ORDER DENYING MOTIONS FOR SEVERANCE AND CONSOLIDATION

(Issued April 10, 1963)

Motions for severance of the above listed dockets from Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, and their consolidation with the Area Rate Proceeding, Docket No. AR61–2, *et al.*, were filed by Atlantic Refining Company (Atlantic) in Docket No. CI62–146 on February 26, 1963, Continental Oil Company (Continental) in Docket No. CI62–147 on March 8, 1963, Cities Service Production (Cities Service) in Docket No. CI62–135 on March 15, 1963, and Tidewater Oil Company (Tidewater) in Docket No. CI62–137 on March 15, 1963. Answers in Opposition to the granting of each of the motions were filed by the Commission Staff and Long Island Lighting Company. Public Service Electric and Gas Company filed an answer in support of Cities Service's motion.

Movants have objected to the Commission action severing their applications from the Area Rate Proceeding, Docket No. AR61–2, *et al.*, and consolidating them with the certificate proceedings, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.* They allege that a settlement agreement approved conditionally by Commission order issued December 21, 1962, requires that the initial price

be determined only in AR61–2, *et al.*, or other similar proceeding, and that Docket No. G–13221, *et al.*, is not such "other similar proceeding."

The applications for certificates of public convenience and necessity which are in question in these proceedings were filed by each of the Movants on August 7, 1961. Temporary authorization was issued to each Movant to sell gas to Tennessee Gas Transmission Company on August 29, 1961, subject to certain conditions. Although they were originally noticed for hearing by the Commission on January 15, 1962, in the consolidated proceeding, Tennessee Gas Transmission Company, Docket No. G–16842, *et al.*, the applications were subsequently severed therefrom by order issued February 26, 1962. On May 15, 1962, the Commission ordered that these four applications for certificates of public convenience and necessity, among others, be consolidated with Docket No. AR61–2, *et al.* Thereafter, on September 4, 1962, Movants submitted a petition for approval of a settlement proposal, which was conditionally approved by order issued December 21, 1962.

The temporary authorization issued to Movants on August 29, 1961, contained certain conditions, as follows:[1]

(1) The initial price for such service shall be 21.4 cents per Mcf at 15.025 psia, subject to Cities Service refunding to Tennessee any amounts collected plus interest at 7 percent per annum in excess of the amount computed at the rate determined to be required by the public convenience and necessity in Docket No. CI62–135.

(2) The above specified rate shall remain in effect until changed by Commission order in this proceeding, Docket No. CI62–135.

The settlement which was approved by the Commission changed the price condition (paragraph (1)) to read:

> The initial price for such service shall be 19.5 cents per Mcf at 15.025 psia; provided, however, that such price shall be changed to agree prospectively with whatever initial service price is determined by the Commission in an order which becomes final and no longer subject to judicial review in Docket No. AR61–2, *et al.*, or other similar proceeding; and provided, further, that if such price so determined is less than 19.5 cents per Mcf, Applicant shall not be obligated to make refunds.

Paragraph (2) of the temporary authorization was not changed.

Movants allege that this change in the temporary authorization requires that the determination of the initial price in their individual dockets must depend upon the outcome of AR61–2, or some similar proceeding.

The intention of the parties to the settlement, as approved by the Commission, must depend upon the language used in the settlement agreement. The terms of the agreement must be interpreted as reasonable men would normally understand them.

At the time the settlement proposal was made and at the time it was approved the individual dockets here concerned were consolidated with the Area Rate Proceedings, AR61–2. It appeared at that time the determination in the certificate proceedings would not be made until such time as the Area Rate proceeding was concluded. However, the Commission was not forever bound to leave consolidated with AR61–2 the certificate matters which at one time it felt should best be considered along with the other matters in the area rate proceeding. The determination of the initial price required by the public convenience and necessity must be determined in the individual docket concerned. The parties to the settlement agreement appear to have considered this, for no change was sought to the other conditions in the temporary authorization. Paragraph

[1] Each of the temporary authorizations contained the same conditions, typical is the temporary issued to Cities Service and quoted herein.

2 of the temporary authorization issued August 29, 1961, stated that the rate should remain in effect until changed by Commission order "in this proceeding, Docket No. CI62–135."

The requirement of proof to justify a price required by the public convenience and necessity is not that which is required to establish a just and reasonable rate. The parties to the settlement must have considered that the Commission would not have allowed the existence of a rate under temporary authorization to continue indefinitely. It could continue only until such time as a decision would be made upon the permanent certificate application in the particular docket involved.

The proceedings in Union Texas Petroleum, *et al.*, are certificate proceedings designed, by consolidation therein of virtually all of the certificate applications pending in southern Louisiana, to permit a determination of the price required by the public convenience and necessity in each of the dockets therein. The temporary authorization agreed upon in the settlement proposal and approved by the Commission states specifically that "the initial price" shall be 19.5 cents * * * provided that such price shall be changed to agree prospectively with whatever initial service price is determined by the Commission" in a final order "in Docket No. AR61–2, *et al.*, or other similar proceeding." The initial service price must be determined by the Commission in a certificate proceeding. As noted above, at the time the settlement proposal was approved by the Commission the certificate proceedings involved here were consolidated as a part of the Area Rate Proceeding, AR61–2, *et al.* It is reasonable to assume, in view of the language used and the failure to change the other condition of the original temporary authorization, that the parties intended the initial service price to be determined in the particular *certificate* proceedings.

In other cases in which settlements have been approved, including those entered upon by these same parties as part of the same settlement proposal here in question, the settlement price has been established for the period of the moratorium, subject to upward or downward adjustment during the period according to any specifically applicable area rate ultimately determined in AR61–2. *Permanent* certificates were issued on that basis. The interpretation we must give the Movants position would lead to the conclusion that the parties intended that the temporary authorization have the same effect as a permanent certificate. If this were so, no advantage would be obtained by the careful use of the language employed in the revision of the temporary authorization. If the same result was intended there was no need for the parties to carefully state otherwise. We must conclude that a different result was intended and that when the parties stated that the *initial price* is to remain in effect until the *initial service price* is determined in Docket No. AR61–2, *et al.*, or other similar proceeding, they intended that the initial service price should remain in effect until a permanent certificate was issued in the specific certificate proceeding for which their application was docketed.

Accordingly, these dockets must remain consolidated with the proceedings in Docket No. G–13221, *et al.* This accords strictly with the terms of the settlement as approved.

The Commission orders:

The motions for severance and consolidation filed by Atlantic Refining Company, Continental Oil Company, Tidewater Oil Company and Cities Service Production Company are denied.

Commissioners O'Connor and Woodward *dissent* on the grounds that the order is inconsistent with the intent of the Settlement Agreement entered into by the parties and approved by the Commission, in that the proceeding here involved is not "similar" to AR61–2 in the sense that that term was used.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.; PAN AMERICAN PETROLEUM CORPORATION, DOCKET NOS. G–10022 AND CI61–974

ORDER DENYING MOTION TO SEVER CERTIFICATE APPLICATIONS AND OMIT INTERMEDIATE PROCEDURE AND ISSUE CERTIFICATES UPON SHORTENED PROCEDURES

(Issued April 10, 1963)

On February 14, 1963, Pan American Petroleum Corporation (Pan American) filed in the above-captioned proceedings, a "Motion to Sever Certificate Applications and Omit Intermediate Decision Procedure and Issue Certificates Upon Shortened Procedures."

The matters in Docket No. G–10022 concern an application to amend Pan American's certificate of public convenience and necessity previously issued in that docket, by adding to the acreage covered thereby, additional acreage located in the Thornwell Field, Jefferson Davis Parish, Louisiana, in accordance with the terms of a contract amendment between Pan American and United Fuel Gas Company dated January 4, 1962. The proposed initial price for the gas attributable to the new acreage, as set out in the supplemental agreement, is 20.3¢ per Mcf at 15.025 psia, including applicable tax reimbursement. On March 20, 1963, Pan American was given temporary authorization to commence sales of gas from this additional acreage and its supplemental agreement was designated Supplement No. 12 to Pan American's FPC Gas Rate Schedule No. 190.

The matters in Docket No. CI61–974 concern Pan American's application for a certificate of public convenience and necessity for authority to sell natural gas in interstate commerce from the Gibson Field, Terrebonne Parish, Louisiana in accordance with the terms of a gas sales contract dated December 8, 1960, between Pan American and United Gas Pipe Line Company. The initial contract price for this gas is 20.25¢ per Mcf at 15.025 psia including applicable tax reimbursement. In accordance with Pan American's request, temporary authorization to make this sale was issued on January 21, 1961. The contract between Pan American and United Gas Pipe Line Company was accepted for filing and designated Pan American's FPC Gas Rate Schedule No. 297.

In its motion, Pan American argues, in essence, that its proposed initial rates in these two dockets are below the initial service rate for Southern Louisiana set forth in our Statement of General Policy No. 61–1 and that no formal hearing should be held on these applications. Pan American contends the proceedings in the two dockets should be severed from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, and that Pan American should be issued certificates under the shortened procedure method of Section 1.32 of our Rules of Practice and Procedure.

Long Island Lighting Company, an intervener in both Docket Nos. G–10022 and CI61–974 filed an answer to Pan American's motion on February 25, 1963, requesting that we deny Pan American's motion.

Our opinion in the *Skelly Case*[1] and our Order Denying Request for the Production and Disclosure of Documents etc. in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, issued February 7, 1963 (29 FPC 273), set forth

[1] *Skelly Oil Company*, 28 FPC 401, Opinion No. 362, Issued August 30, 1962.

full explanations why Pan American's motion must be denied. In the latter Order, by which we denied requests by Pan American and others, we stated at page 275:

> Our opinion in *Skelly* makes it clear that the Policy Statement sets forth only "guideline" prices at which the Commission indicated it would exercise its discretion in the absence of protest by intervening parties to certificate sales in a particular area. It did not purport to fix the "in-line" price which *CATCO* and the *UGI* cases which followed it make clear are, in the absence of a compelling showing to the contrary, to be the public convenience and necessity price fixed after the statutory Section 7 hearing. [Footnotes omitted]

In support of its motion Pan American cites *Sohio Petroleum Co.* v. *F.P.C.*, 298 F. 2d 465 (CA10, 1961), and *Pan American Petroleum Corp.* v. *F.P.C.* 298 F. 2d 478 (CA10, 1961). Those cases are not applicable to the question presented here. They deal with the Commission's authority to condition *temporary* certificates based upon the guideline rates. They arose under provisions of the Natural Gas Act which allow the Commission to act *without hearing*. Whatever support the Court in *Sohio* may have given to the Policy Statement prices, it certainly did not indicate that the Policy Statement guideline rates have obviated the necessity for hearings upon application for permanent certificates of public convenience and necessity.

Numerous parties have intervened in both of Pan American's dockets concerned herein.[2] A full public hearing is therefore required and the burden of justifying the prices proposed in these dockets rests with Pan American. The initial rates certificated will be based upon the evidence of record in the consolidated proceeding in Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, which includes Pan American's Dockets Nos. G–10022 and CI61–974, and not upon the guideline rate.

Pan American has demonstrated no reason justifying the granting of the relief herein sought. Accordingly, it is necessary that the motion be denied.

The Commission orders:

The Motion To Sever Certificate Applications and Omit Intermediate Procedure and Issue Certificates Upon Shortened Procedure filed by Pan American Petroleum Corporation on February 14, 1963, is hereby denied.

[2] See *Order Permitting Interventions* issued March 25, 1963, in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.: SOCONY MOBIL OIL COMPANY, INC., DOCKET NO. G–17625; CONTINENTAL OIL COMPANY, DOCKET NO. G–17649; NEWMONT OIL COMPANY, DOCKET NO. G–17765

ORDER DENYING MOTIONS TO SEVER AND REJECTING SETTLEMENT PROPOSAL

(Issued April 10, 1963)

On November 2, 1962, Socony Mobil Oil Company (Socony), Continental Oil Company (Continental) and Newmont Oil Company (Newmont)[1] filed a joint

[1] Hereinafter referred to collectively as MCN.

petition for issuance of certificates in accordance with settlement proposals in Socony's Docket Nos. G–13827 and G–17625, Continental's Docket Nos. G–13680 and G–17649, and Newmont's Docket Nos. G–13948 and G–17765.

Two settlement proposals were submitted. The first concerned applications for certificates of public convenience and necessity filed by Socony, Continental and Newmont in Docket Nos. G–13827, G–13680 and G–13948, respectively. Hearings had commenced on these applications at the time of filing but were recessed to give the parties an opportunity to negotiate the settlement terms. On January 2, 1963, we issued an order approving the first settlement agreement and issuing permanent certificates in Docket Nos. G–13827, G–13680 and G–13948.[2]

The second settlement proposal filed on November 2, 1962, relates to Docket Nos. G–17625, G–17649, and G–17765. This is the settlement proposal with which we are concerned here.

Docket Nos. G–17625, G–17649 and G–17765 pertain to contracts entered into by Socony, Continental and Newmont with Tennessee Gas Transmission Company on December 12, 31, and 30, 1958, respectively. These contracts are designated as Rate Schedules Nos. 177, 165 and 4, respectively, for the sale of gas from 160 acres of a 640-acre unit in the East Cameron Block 62 Field, Offshore Louisiana.

MCN on March 6, 1958, were granted temporary authorization to make the sales from the 160 acres[3] at 22.9¢ per Mcf subject to the condition that MCN refund the difference between 22.9¢ and the rate found to be required by the public convenience and necessity.

Subsequent to the December 1958 contracts in Docket Nos. G–17625, G–17649 and G–17765, MCN amended their contracts with Tennessee to add 2,340 acres located in the N/2 of Block 66 East Cameron Area. These contract amendments were dated September 6, 1961, September 6, 1961, and September 14, 1961, respectively, and are designated Supplement No. 1 to Rate Schedule No. 177, Supplement No. 1 to Rate Schedule No. 165 and Supplement No. 1 to Rate Schedule No. 4, respectively. MCN on December 11, 1961 were granted temporary authorization to make the sales from the 2,340 acres[4] at 19.5¢ per Mcf (inclusive of applicable tax reinbursement).

As noted above, the MCN settlement proposal contains two aspects.

As to the 160-acre aspect, the proposal is similar to those heretofore approved by the Commission and provides as follows:

(1) A reduction in rate from 22.9¢ per Mcf (including 1.5¢ per Mcf tax reimbursement) at 15.025 psia now being collected to 19¢ per Mcf (inclusive of tax reimbursement).

(2) A moratorium on further rate increases until July 1, 1967.

(3) Extension of make-up periods for take-or-pay gas to 48 months.

(4) Refunds of all amounts collected for Louisiana State taxes.

(5) Refund of two-thirds of the difference between 21.4¢ per Mcf and 19¢ per Mcf collected from the date of initial delivery through September 30, 1962.

(6) Issuance of certificates of public convenience and necessity.

As to the 2,340-acre aspect, the proposal provides for the continuation of the temporary authorizations at 19.5 cents per Mcf with the same rate change moratorium as applies to the 160-acre aspect of the settlement.

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[2] *Tennessee Gas Transmission Company, et al.*, Docket No. G–14562, *et al.* Order Granting Motion to Omit the Intermediate Decision, Approving Proposed Settlement and Issuing Certificates of Public Convenience and Necessity, 29 FPC 4.

[3] This aspect of the settlement proposal will be referred to hereinafter as the 160-acre aspect.

[4] This aspect of the proposal will be referred to hereinafter as the 2,340-acre aspect.

The proposal would make both aspects subject to the outcome of the South Louisiana Area Rate Proceeding, Docket No. AR61–2 prospectively and would also allow MCN to file rate increases for reimbursement for ½ of any tax levied by the United States during the "moratorium period."

Since the proposal does not provide for the issuance of permanent certificates of public convenience and necessity as to the 2,340-acre aspect, and in order to give interested parties an opportunity to consider the settlement proposal, we consolidated Docket Nos. G–17625, G–17649 and G–17765 with the consolidated South Louisiana certificate proceedings, Union Texas Peroleum, *et al.*, Docket No. G–13221, *et al.*, by our order of January 22, 1963 in these proceedings.

On February 25, 1963, Socony filed a motion to sever Docket No. G–17625 from the Union Texas Petroleum, *et al.* consolidated proceeding but only insofar as Docket No. G–17625 and the setttlement proposal concerns the 160-acre aspect. Socony states:

> The parties to the settlement negotiations were unable to agree as to Socony's Gas Rate Schedule No. 177–1 covering the said 2,340 acres; consequently, the said Settlement Proposal filed on October 29, 1962, merely provides in substance a continuation of the temporary authorization subject to a rate change moratorium. Socony does not seek by this motion to sever Docket No. G–17625 from the above-referenced consolidated proceeding insofar as said docket pertains to Socony's Gas Rate Schedule No. 177–1 covering the said 2,340 acres. (Motion p. 4)

Subsequently, however, on March 8, 1963, Continental and Newmont filed a joint motion in Docket Nos. G–17649 and G–17765 requesting that we sever both aspects of their dockets from the Union Texas Petroleum, *et al.*, proceeding, approve the settlement in all aspects and issue permanent certificates as to the 160 acres under the shortened procedure. Continental and Newmont state:

> As shown in Paragraph III herein, the parties to the settlement proposal agreed to continue the 19.5 cent rate applicable to the sales from the 2,340 additional acres, in effect until ultimate determination of an applicable area rate or rates in the South Louisiana area rate proceeding or proceedings of similar nature, prospectively from such determination. Hence the settlement agreement did not reflect any lack of agreement on the rate issues pertaining to the rates for the 2,340 acres. Rather this settlement agreement expressly provided for the continuation of the present Commission conditioned temporary authorization rate of 19.5 cents per Mcf. (Motion p. 7)
>
> Therefore, Continental and Newmont submit that the captioned proceedings should not and cannot be severed in part from the *Union Texas* proceedings. Severance must be as to the entire dockets. (Motion p. 8)

Staff, on March 18, 1963, filed an answer in opposition to the Motion of Continental and Newmont.

It is clear from the foregoing that even the producer parties do not agree as to the meaning of the settlement proposal. Moreover, if we were to accept Continental's and Newmont's interpretation of the proposal the producers would not be issued permanent certificates as to the 2,340-acre aspect for an indefinite period.[5] We could not approve of such a proposal. The public interest requires that permanent certificates be issued as soon as is administratively feasible after hearing.

It should be pointed out that we are disapproving the settlement proposal herein, not only because of its ambiguity, but also for its failure to provide for

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[5] Unlike the settlement proposal which was previously approved and which provided for the issuance of permanent certificates, this proposal makes no allowance whatsoever for the issuance of permanent certificates for sales from the 2,340 acres.

the issuance of permanent certificates to the applicants. The proponents are free to submit a settlement proposal without these defects and we shall give it our consideration. In the meantime the applications for certificates of public convenience and necessity in Docket Nos. G–17625, G–17649 and G–17765 will remain consolidated for hearing in the Union Texas Petroleum, *et al.*, proceeding.

The Commission orders:

(A) The Petition for Issuance of Order Granting Permanent Certificates of Public Convenience and Necessity in Accordance with Applications as Modified by the Settlement Proposals and Request for Shortened Procedures Pursuant to Rule 1.32, filed in Docket Nos. G–17625, G–17649 and G–17765 by Socony, Continental and Newmont on November 2, 1962, is hereby denied.

(B) The Motion to Sever Certificate Application in Part and for Issuance of Permanent Certificates in Accordance With Application as Modified by Settlement Proposal Upon Shortened Procedures filed in Docket No. G–13221, *et al.*, and G–17625 by Socony on February 25, 1963, is hereby denied.

(C) The Motion to Sever Applications for Certificates and Motion to Issue Certificates in Accordance with Applications as Modified by Settlement Proposal Upon Shortened Procedures, filed in Docket Nos. G–13221, *et al.*, G–17649 and G–17765 by Continental and Newmont on March 8, 1963, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

AREA RATE PROCEEDING, ET AL., DOCKET NO. AR61–1, ET AL.

ORDER DENYING TERMINATION OF INTERVENTION

(Issued April 11, 1963)

On March 1, 1963, Transwestern Pipeline Company filed, under Section 1.11(d) of our Rules of Practice and Procedure, a notice of withdrawal of its petition to intervene herein and a request that we terminate its intervention. Transwestern's petition to intervene in this proceeding was granted by order of May 31, 1961.

In support of its request Transwestern states that its "interests would be better served by withdrawing its intervention in this proceeding." Transwestern complains that it had been subjected to burdensome interrogatories (which are attached to the notice); that answering such interrogatories would be time-consuming and expensive and would threaten "to foment controversy between Transwestern and its producers" and might "force Transwestern into an adversary position which it does not intend nor wish to assume."

The proceeding involves, among other things, a hearing under Section 5(a) of the Natural Gas Act to determine whether any of certain Permian Basin contracts executed by Transwestern is "unjust, unreasonable, unduly discriminatory, or preferential" and, if so, to determine the just and reasonable contract to be substituted. We are at a loss to understand why Transwestern, by its own admission, "has not participated actively in the hearings in this matter." Transwestern cannot evade its responsibilities as a public utility under color of avoiding controversy. The continuing validity of contracts to which it is a party are at issue, and if it had not sought permission to intervene we should have been inclined to make it a party on our own motion. In view of the above, we think it essential that Transwestern remain a party to this proceeding and that its withdrawal as an intervener would not be in the public interest.

The Commission finds:

Good cause has not been shown for permitting withdrawal of Transwestern's petition to intervene or for terminating Transwestern's intervention.

The Commission orders:

(A) Permission to withdraw Transwestern's petition to intervene is denied.

(B) Transwestern's request for termination of intervention is denied.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NORTHERN INDIANA PUBLIC SERVICE COMPANY, DOCKET NO. CP63-170

FINDINGS AND ORDER DIRECTING INCREASED SALE OF NATURAL GAS

(Issued April 12, 1963)

On December 17, 1962, Northern Indiana Public Service Company (Applicant) filed in Docket No. CP63-170 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing American Louisiana Pipe Line Company (American Louisiana) to sell additional volumes of natural gas for resale and distribution by Applicant in the Town of LaGrange and environs, Indiana, all as more fully set forth in the application on file with the Commission.

Applicant is presently supplied up to 729 Mcf of natural gas per day by American Louisiana pursuant to an order of the Commission, issued December 29, 1959, in Docket No. G-18733, 22 FPC 1166. Applicant states that the additional volumes herein requested are necessary to meet the growing requirements of LaGrange and to initiate natural gas service in the rural areas of Bloomfield and Clay Townships, adjacent to LaGrange.

The application shows total estimated peak day and annual requirements of Applicant by the 1965-1966 heating season to be 1495 Mcf and 168,300 Mcf, respectively. Applicant requests, therefore, that American Louisiana be directed to sell up to 1495 Mcf of natural gas per day to Applicant in lieu of the 729 Mcf per day presently authorized.

Applicant proposes to construct and operate additional distribution facilities in order to render the additional proposed service. Such facilities are estimated to cost $49,700.

The application indicates that Applicant has received appropriate authorization to render the additional service from the Public Service Commission of Indiana.

On January 14, 1963, American Louisiana filed an answer to the subject application stating that it has no objection to the issuance of the requested order.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on February 28, 1963 (28 F.R. 1895). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) American Louisiana Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of May 7, 1956, in Docket No. G-2306, *et al.*, (15 FPC 23).

(2) Applicant, Northern Indiana Public Service Company, is a public utility

duly organized and existing under the laws of the State of Indiana and authorized to engage in the business of distributing and selling natural gas within said State.

(3) It is necessary and desirable in the public interest that American Louisiana be directed to sell up to 1495 Mcf of natural gas per day to Applicant in lieu of the 729 Mcf per day heretofore authorized, as set forth in the application and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive the additional volumes of natural gas from American Louisiana wihin one year from the date of issuance of this order.

(5) The requirement that American Louisiana serve Applicant, as proposed, will not place any undue burden upon American Louisiana nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) American Louisiana Pipe Line Company be and it is hereby directed to sell up to 1495 Mcf of natural gas per day to Applicant in lieu of the 729 Mcf per day heretofore authorized, all as hereinbefore described and as more fully set forth in the application.

(B) Applicant shall be prepared to receive the additional volumes of natural gas from American Louisiana within one year from the date of issuance of this order.

(C) American Louisiana shall report to the Commission in writing the date of commencement of the additional service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SOUTH GEORGIA NATURAL GAS COMPANY, DOCKET NO. CP63-39

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 12, 1963)

On August 10, 1962, supplemented November 15, 1962, South Georgia Natural Gas Company (Applicant), filed in Docket No. CP63-39 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and sale of natural-gas to Douglas, Georgia. The proposed facilities to consist of a 1,100 horsepower gas turbine driven compressor to be located upon its 12-inch main transmission pipeline near Crawford, Alabama, and approximately 13 miles of pipeline connected with its present system near Ocilla, Georgia, and extending eastward to connect with the proposed facilities of the city of Douglas, Georgia. The proposed facilities will be utilized to increase sales to present customers and to enable Applicant to sell natural-gas to the city of Douglas for resale for consumption in that municipality and its environs. Metering, regulating and related facilities are to be installed by Applicant at the point of interconnection with the City's facilities.

The estimated total cost of construction of the proposed facilities is $378,600, to be financed from funds on hand.

The estimated annual gas requirements of the City of Douglas for the third year is estimated to be 179,663 Mcf with an estimated peak day requirement of 2,238 Mcf.

The proposed sale will be made under applicant's Rate Schedule G–1 of its FPC Gas Tariff, Original Volume No. 1.

Pursuant to due notice a public hearing was held in Washington, D.C., on April 1, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene in opposition or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, South Georgia Natural Gas Company, is a natural gas company within the meaning of the Natural Gas Act as found by the Commission in its order of August 3, 1954 in Docket No. G–1915.

(2) The facilities hereinbefore described, as more fully described in the application are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant and the proposed transportation and sale of natural gas by Applicant to the City of Douglas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction, and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant to the City of Douglas, Georgia are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, South Georgia Natural Gas Company, to construct, and operate the proposed facilities and to transport and sell natural gas to the City of Douglas as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

COLORADO-WYOMING GAS COMPANY, DOCKET NO. CP63-202

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 15, 1963)

On January 14, 1963, Colorado-Wyoming Gas Company (Applicant) filed in Docket No. CP63-202 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to construct and operate during the calendar year 1963 certain mainline taps for the purpose of rendering service to existing customers at a total cost not to exceed $15,000, with the cost of any single tap to be limited to a cost not to exceed $2,000. Applicant also seeks authority to make certain other minor reinforcements, extensions, and relocations of facilities as may be required to render service during 1963. Total cost thereof is not to exceed $50,000, and no single installation or project of this type shall exceed $20,000.

The volume of natural gas expected to be sold to customers through the proposed facilities during the year 1963 will not exceed 36,000 Mcf upon the annual basis.

These volumes of natural gas should not affect Applicant's gas supply or the operation or capacity of its existing facilities.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 27, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Colorado-Wyoming Gas Company, a Delaware corporation having its principal place of business in Denver, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of June 5, 1945, and Docket No. G-285 (4 FPC 938).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the facilities and the delivery of the natural gas during the calendar year 1963 as proposed by Applicant are required by the public convenience and necessity and a certificate therefore should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The authorization granted hereinafter should be limited to construction during the calendar year 1963, and the total expenditures, for all facilities of the two classes above described shall not exceed the sums of $15,000 and $50,000 respectively.

(6) Public convenience and necessity require that the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.20) should attach to the certificate hereinafter issued to Applicant and to the exercise of the rights granted thereunder.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit on or before March 1, 1964, a statement, by projects: (a) location, (b) description, (c) name of resale customer served, (d) actual final cost of facilities installed, (e) the use to which the gas is put, and (f) the estimated annual peak day deliveries to each resale customer.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Colorado-Wyoming Gas Company to construct and operate natural gas facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1963, and the total expenditures, for pipeline taps as proposed by Applicant, are hereby limited to a maximum of $15,000 and for other facilities not to exceed $50,000.

(C) The general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act shall attach to the certificate issued in paragraph (A) above and to the exercise of the rights granted thereunder.

(D) Applicant shall submit on or before March 1, 1964, a statement showing, by projects: (a) location, (b) description, (c) name of customer served, (d) actual final cost of facilities installed, (e) the use to which the gas is put, and (f) the estimated annual and peak day deliveries to each resale customer.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP63-207

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 15, 1963)

On January 15, 1963, El Paso Natural Gas Company (Applicant) filed an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a new compressor station with compressors therein which together with additional installations in three existing compressor stations will add 13,600 horsepower of compression. The foregoing and other facilities to be constructed will increase the capacity of the applicant's natural-gas transmission system in areas other than the State of California. The proposed facilities are to be located on or near the San Juan Mainline and will be so arranged as to provide the additional capacity of 60,690 Mcf per day, all as more fully described in the applica-

tion. Applicant states that the construction and operation of the facilities proposed will be needed in the near future because of the continued increase in the average daily requirements for natural gas by Applicant's customers. Furthermore, construction and operation of these facilities proposed will add materially to the flexibility and operation of Applicant's entire pipeline system in the event of any disaster on any part of the Southern Division of the pipeline system.

The estimated total cost of the facilities is $3,187,000.

Pursuant to due notice, a public hearing was held in Washington, D.C., on March 28, 1963, respecting the matters involved in and the issues presented by the application, as supplemented, herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) The facilities hereinbefore described, as more fully described in the application, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation of natural gas by Applicant are required by the public convenience and necessity and a certificate therefore should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities and to transport natural gas as hereinbefore described, all as more fully described in the application, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulation.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

ARKANSAS POWER & LIGHT COMPANY, DOCKET NO. E-7090

ORDER TO SHOW CAUSE AND PROVIDING FOR HEARING

(Issued April 16, 1963)

Arkansas Power & Light Company (Arkansas Power), Little Rock, Arkansas, incorporated under the laws of the State of Arkansas, conducts utility operations at wholesale for resale or at retail in the States of Arkansas, Tennessee, Missouri, and Louisiana. Arkansas Power owns and operates interconnected electric facilities in the States of Arkansas, Tennessee, Missouri, and Louisiana, which facilities are also interconnected with electric facilities of The Empire District Electric Company, Louisiana Power & Light Company, Mississippi Power & Light Company, Tennessee Valley Authority, Oklahoma Gas and Electric Company, Southwestern Electric Power Company, and Arkansas-Missouri Power Company. Arkansas Power regularly transmits to or interchanges electric power and energy with each of those seven utilities.

Arkansas Power reports that it currently provides electric energy service at wholesale for resale to 23 purchasers for which it has no established rate schedules on file with this Commission. Those purchasers are as follows: Southwestern Power Administration, Citizens Light and Power Company, Public Utilities Company of Crossett, West Memphis, North Little Rock, Prescott, Hope, and Osceola, Arkansas, Benton Municipal Light and Water Works, Ashley-Chicot Electric Cooperative, Inc., Riceland Electric Cooperative, Inc., C & L Rural Electric Cooperative Corp., Craighead Electric Cooperative Corp., Woodruff Electric Cooperative Corp., Petit Jean Electric Cooperative Corp., First Electric Cooperative Corp., Farmers Electric Cooperative Corp., Carroll Electric Cooperative Corp., South Central Electric Cooperative, Inc., Southwest Arkansas Electric Cooperative Corp., Ouachita Rural Electric Cooperative Corp., Mississippi County Electric Cooperative, Inc., and North Arkansas Electric Cooperative, Inc. Arkansas Power's Annual Report for 1961 shows that its wholesale sales to those purchasers totalled 723,542,000 kwh.[1] Its total wholesale sales for resale to all purchasers during 1961 were 928,195,000 kwh.[1]

Arkansas Power currently has on file with this Commission the following rate schedules: Rate Schedule FPC Nos. 10 and 11, Tennessee Valley Authority; Rate Schedule FPC No. 13 and Supplement Nos. 1 (including Exhibit "A") and 2 thereto, Arkansas-Missouri Power Company; Rate Schedule FPC No. 14, including Exhibit "A", and Supplement Nos. 1, 2, 3, 4, 5, 6, 7 and 8 thereto, The Empire District Electric Company; Rate Schedule FPC No. 18 and Supplement No. 1 thereto, Louisiana Power & Light Company, Mississippi Power & Light Company;

[1] Includes 86,000,000 kwh sold to Southwestern Power Administration under an interchange arrangement and reflects net interchanges of energy with other electric utilities.

Rate Schedule FPC No. 19 and Supplement Nos. 2, 3, 4, 5, 6A, 6B, 6C, 6D and 6E thereto, Oklahoma Gas & Electric Company; and Rate Schedule FPC No. 20 and Supplement Nos. 1 and 2, together with Supplement No. 1 to each, and Supplement Nos. 3, 4, 5, 6 and 7 thereto, Southwestern Electric Power Company.

By letter dated August 3, 1962, the foregoing circumstances were brought to the Company's attention together with a staff request that the Company undertake appropriate action to establish rate schedules for its wholesale sales to the above-named 23 purchasers pursuant to the requirements of Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder. By letter dated August 31, 1962, the Company submitted certain data regarding those sales for the information of the Commission but declined to undertake the filing of rate schedules therefor.

The Commission finds:

In view of the foregoing, it is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206, 308 and 309 thereof, that Arkansas Power be directed to show cause in writing and at a formal hearing why the Commission should not find and determine that the sales at wholesale for resale to the 23 purchasers referred to in the recital above are sales at wholesale in interstate commerce subject to the jurisdiction of this Commission under the provisions of the Federal Power Act for which Arkansas Power must file appropriate rate schedules in the manner provided in Part 35 of the Commission's Regulations under that Act.

The Commission orders:

(A) A public hearing shall be held on June 24, 1963, commencing at 10:00 A.M. (EDST) in a Hearing Room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., at which Arkansas Power shall show cause why the Commission should not:

(1) find and determine that Arkansas Power is a public utility within the meaning of that term as used in the Federal Power Act by reason of its ownership and operation of facilities for the transmission and sale at wholesale of electric energy in interstate commerce;

(2) find and determine that in each instance Arkansas Power's sales at wholesale for resale to the 23 purchasers referred to in the recital above are sales at wholesale in interstate commerce, subject to the provisions of Sections 205 and 206 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder;

(3) find and determine that at least since January, 1961 Arkansas Power has been violating and threatens to continue violating the provisions of Section 205 of the Act and Part 35 of the Commission's Regulations thereunder;

(4) order Arkansas Power to file rate schedules for its wholesale electric service to the 23 purchasers referred to in the recital above in accordance with the provisions and requirements of Section 205 of the Act and Part 35 of the Commission's Regulations thereunder; and

(5) issue such other orders and take such other actions as may be necessary or appropriate to bring about compliance with the Federal Power Act and the Commission's Regulations thereunder.

(B) On or before May 6, 1963, Arkansas Power shall respond to this order through Answer as provided in Section 1.9(c) of the Commission's Rules of Practice and Procedure, 18 CFR 1.9(c).

(C) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, 25, D.C., in accordance with the Com-

mission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37) on or before May 1, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

INDIANA & MICHIGAN ELECTRIC COMPANY, DOCKET NO. E-7089

ORDER TO SHOW CAUSE AND PROVIDING FOR HEARING

(Issued April 16, 1963)

Indiana & Michigan Electric Company (Indiana Company), Fort Wayne, Indiana, incorporated under the laws of the State of Indiana, conducts utility operations both at wholesale for resale and at retail in the States of Indiana and Michigan. Indiana Company owns and operates interconnected electric production and transmission facilities in the States of Indiana and Michigan, which facilities are also interconnected with electric facilities of Ohio Valley Electric Corporation, Commonwealth Edison Company, Michigan Gas & Electric Company, Northern Indiana Public Service Company, Public Service Company of Indiana, Inc., and Ohio Power Company in addition to a number of municipal and cooperatively owned rural systems. Indiana Company regularly transmits or interchanges electric power and energy with each of these utility systems.

Indiana Company reports that it currently provides electric energy service at wholesale for resale to 25 purchasers for which it has no established rate schedules on file with this Commission. Those purchasers are a follows: Albion, Anderson, Auburn, Avilla, Bluffton, Columbia City, Fort Wayne, Frankton, Garrett, Gas City, Mishawaka, New Carlisle, Portland, Richmond and Warren, Indiana, Niles and Sturgis, Michigan, Allen-Wells County Rural Electric Membership Corporation, Fruit Belt Electric Cooperative, Huntington County REMC, Jay County REMC, Noble County REMC, Paulding-Putnam Electric Cooperative, Inc., Wayne County REMC, and Whitley County REMC. Indiana Company's Annual Report for 1961 shows that its wholesale sales to these purchasers totalled 789,665,250 kwh. Its total wholesale sales for resale to all purchasers during 1961 were 1,430,285,984 kwh.[1]

Indiana Company currently has on file with this Commission the following rate schedules: Rate Schedule FPC No. 14–A, including Exhibit "A", and Supplement Nos. 1 through 5 thereto, Public Service Company of Indiana, Inc.; Rate Schedule FPC No. 14–C and Supplement No. 1 thereto, Public Service Company of Indiana, Inc., Northern Indiana Public Service Company; Rate Schedule FPC No. 15, Michigan Gas & Electric Company; Rate Schedule FPC No. 16 and Supplement No. 1 thereto, Ohio Power Company, Cincinnati Gas & Electric Company; Rate Schedule FPC No. 17 and Supplement Nos. 1, 2 (including Exhibits "A" and "B"), 3, and 4, Appalachian Power Company, Ohio Power Company; Rate Schedule FPC No. 19 and Supplement Nos. 2 (and Supplement Nos. 1 through 3 thereto) through 6 thereto, Ohio Valley Electric Corporation; Rate Schedule FPC No. 20 and Supplement Nos. 1, 2, 3, 4 (including Exhibit "A"), 5, and 6 thereto, Commonwealth Edison Company; Rate Schedule FPC No. 21, Indianapolis Power & Light Company; Rate Schedule FPC No. 22, Northern Indiana Public Service Company; and Rate Schedule FPC No. 23, Illinois Power Company.

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[1] Does not include energy reported as delivered under interchange arrangements.

By letter dated January 2, 1963, the foregoing circumstances were brought to the Indiana Company's attention together with a staff request that the Company undertake appropriate action to establish rate schedules for its wholesale sales to the above-named 25 purchasers pursuant to the requirements of Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder. By letter dated January 29, 1963, counsel for Indiana Company requested an extension of time in which to take this matter under consideration, and the Company was given an extension of time until February 28 to complete its rate schedule filings. To date no further response has been received from Indiana Company.

The Commission finds:

In view of the foregoing, it is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206, 308 and 309 thereof, that Indiana Company be directed to show cause in writing and at a formal hearing why the Commission should not find and determine that the sales at wholesale for resale to the 25 purchasers referred to in the recital above are sales at wholesale in interstate commerce subject to the jurisdiction of this Commission under the provisions of the Federal Power Act for which Indiana Company must file appropriate rate schedules in the manner provided in Part 35 of the Commission's Regulations under that Act.

The Commission orders:

(A) A public hearing shall be held on June 3, 1963, commencing at 10:00 A.M. (EDST) in a Hearing Room of the Federal Power Commission, 441 G Street, NW., Washington, D.C., at which Indiana Company shall show cause why the Commission should not:

(1) find and determine that Indiana Company is a public utility within the meaning of that term as used in the Federal Power Act by reason of its ownership and operation of facilities for the transmission and sale at wholesale of electric energy in interstate commerce;

(2) find and determine that in each instance Indiana Company's sales at wholesale for resale to the 25 purchasers referred to in the recital above are sales at wholesale in interstate commerce, subject to the provisions of Sections 205 and 206 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder;

(3) find and determine that at least since January 1961, Indiana Company has been violating and threatens to continue violating the provisions of Section 205 of the Act and Part 35 of the Commission's Regulations thereunder;

(4) order Indiana Company to file rate schedules for service to the 25 purchasers referred to in the recital above in accordance with the provisions and requirements of Section 205 of the Act and Part 35 of the Commission's Regulations thereunder; and

(5) issue such other orders and take such other actions as may be necessary or appropriate to bring about compliance with the Federal Power Act and the Commission's Regulations thereunder.

(B) On or before May 6, 1963, Indiana Company shall respond to this order through Answer as provided in Section 1.9(c) of the Commission's Rules of Practice and Procedure, 18 CFR 1.9(c).

(C) Notices of intervention on petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37) on or before May 1, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP62-165

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued April 16, 1963)

On January 15, 1962, as supplemented on March 1, 1962, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP62-165 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval of the Commission to abandon approximately 2.7 miles of 12-inch pipeline previously used in transporting natural gas produced from two leases in the Benezette Field, Elk County, Pennsylvania, for sale and delivery to The Manufacturers Light and Heat Company, all as more fully set forth in the application as supplemented.

The subject 2.7 miles of pipeline proposed to be abandoned have not been connected to Applicant's main gas transmission system for several years. The facilities will be sold to Service Pipe and Supply Company for $2,500.

Applicant was authorized to acquire and operate the subject facilities by the Commission's order of December 23, 1954, in Docket No. G-4226 (Docket No. G-2648, *et al.*, 13 FPC 1626).

Pursuant to due notice, a public hearing was held in Washington, D.C., on September 20, 1962, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

Commission action on the application herein has been deferred pending action upon the related application of the independent producer for permission and approval to abandon the natural gas service which required the use of the subject facilities. (Docket No. CI62-1278)

Hearing has been held on that related application and the two proceedings may be disposed of simultaneously.

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of July 15, 1947, in Docket No. G-910 (6 FPC 777).

(2) The facilities proposed to be abandoned as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, are subject to the jurisdiction of the Commission, and the abandonment of said facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonment by Applicant as hereinbefore described is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

(4) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant, Tennessee Gas Transmission Company, of the facilities hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of the subject abandonment within 10 days of the date thereof.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

TRICO ELECTRIC COOPERATIVE, INC., DOCKET NO. E-7073

ORDER AUTHORIZING TRANSMISSION OF ELECTRIC ENERGY TO MEXICO

(Issued April 16, 1963)

Trico Electric Cooperative, Inc. (Trico), incorporated under the laws of the State of Arizona, with its principal place of business at Tucson, Arizona, filed an application on November 15, 1962, as supplemented on December 19, 1962, for authorization, pursuant to Section 202(e) of the Federal Power Act, to transmit a maximum of 200,000 kwh of electric energy annually from the United States to Mexico at a maximum rate of transmission of 40 kw.

The energy proposed to be exported will be sold by the Cooperative to the Comision Federal de Electricidad, Division Noroeste, an agency of the Mexican government, with its principal place of business at Hermosillo, Sonora, in accordance with the terms and at the rates set forth in an Agreement for the Purchase of Power dated September 15, 1962, between the Comision Electricidad and Trico, incorporated by reference as an exhibit to the application. The supplier of the energy proposed to be transmitted to Mexico will be the United States Bureau of Reclamation through facilities at Tucson and Marana, Arizona. Such energy will be delivered by Trico to the Comision Federal de Electricidad by means of a proposed three-phase, 24,900/2,300 volt step-down substation and 2,300 volt metering point, located at the border approximately 1,000 feet northwest of Boundary Marker No. 139.[1] The application indicates that the energy to be exported by Trico will be used in the small community of Sasabe, Sonora.

Written notice of the application has been given to the Arizona Corporation Commission and to the Governor of that State. Notice of the filing of the application has also been given by publication in the Federal Register on February 2, 1963, (28 F.R. 1086), stating that any person desiring to be heard or to make any protest with reference to the application should on or before February 15, 1963, file with the Federal Power Commission, Washington 25, D.C., a petition or protest in accordance with the Commision's Rules of Practice and Procedure. On February 15, 1963, Mable Nicholson of Tucson, Arizon filed a protest, the substance of which is that she does not think it would be fair to

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[1] By permit signed by the Chairman of the Federal Power Commission on April 10, 1963, accepted by the Cooperative on March 18, 1963, Docket No. E-7073, and issued as hereinafter provided, the construction, operation, maintenance and connection of these facilities at the international border of the United States for the transmission of electric energy between the United States and Mexico is authorized pursuant to Executive Order No. 10485, dated September 3, 1953.

make available power generated by the Federal government, for use in a foreign country, in preference to selling it to investor-owned, tax-paying utilities which operate exclusively within the United States. Our investigation shows that the proposed sale of 40 kw of power for exportation by the Applicant herein will not impair its ability to serve its customers or affect the supply of power within the United States. Therefore, the basic requirements of Section 202(e) are satisfied. No other petition or protest to be heard in opposition to the granting of the application has been received.

The Commission finds:

The transmission of electric energy from the United States to Mexico, as limited herein and as hereinafter authorized, will not impair the sufficiency of electric supply within the United States and will not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission.

The Commission orders:

(A) Trico is hereby authorized to transmit electric energy from the United States to Mexico in accordance with the terms and conditions set forth in the application and subject to the provisions of this order.

(B) The electric energy which Trico is hereby authorized to transmit from the United States to Mexico shall be in an amount not in excess of 200,000 kwh per year at a rate not to exceed 40 kw over facilities covered by the aforementioned Permit signed by the Chairman of the Federal Power Commission on April 10, 1963, Docket No. E–7073.

(C) The authorization herein granted may be modified from time to time or terminated upon further order of the Commission, but in no event shall such authorization extend beyond the date of termination or expiration of the Permit referred to in paragraph (B) above.

(D) Trico shall conduct all operations pursuant to the authorization herein granted in accordance with the provisions of the Federal Power Act and pertinent rules, regulations or orders issued by the Commission.

(E) Trico shall install and maintain adequate metering equipment to measure the flow of all energy transmitted between the United States and Mexico; shall make, keep and preserve full and complete records with respect to the movement of such energy; and shall furnish, with respect to said transmission of electric energy on or before February 15 of each year, a report in triplicate showing the kilowatt hours transmitted in each direction, the maximum kilowatt rate of transmission, and the consideration paid or received therefor by the Cooperative, during each month of the preceding calendar year.

(F) This authorization to transmit electric energy from the United States to Mexico shall not be transferable or assignable, but shall continue in effect temporarily for a reasonable time thereafter in the event of the involuntary transfer of facilities used hereunder by operation of law (including such transfers to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for permanent authorization and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the physical facts relating to sufficiency of supply, rates, and nature of use remain substantially the same as before the transfer.

(G) This authorization shall be without prejudice to the authority of any State or State regulatory commission for the exercise of the lawful authority vested in the State or State regulatory commission over Trico.

(H) This authorization is without prejudice to the authority of this Commission, or any other regulatory body, with respect to rates, service, accounts,

valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission, or other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

(I) Concurrently with the issuance of this order, the Permit signed by the Chairman of the Federal Power Commission, referred to in paragraph (B) above, shall be issued and a copy thereof transmitted by the Secretary to the Cooperative.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CALIFORNIA-PACIFIC UTILITIES COMPANY, AND UTAH POWER & LIGHT COMPANY, PROJECT NOS. 749 AND 1740

ORDER APPROVING TRANSFER OF LICENSES

(Issued April 17, 1963)

Joint application was filed on January 21, 1963, by California—Pacific Utilities Company, licensee for Project Nos. 749 and 1740, and Utah Power & Light Company, of Salt Lake City, Utah, for Commission approval of transfer of the licenses from the former to the latter.

Project No. 749 is located on Birch Creek near Malad City, Idaho, and consists of a small dam across the creek, a water conduit, a powerhouse containing a 250 kw generator, and other appurtenant facilities. Project No. 1740 is located on Pine Creek, in Lincoln County, Wyoming, and consists of a concrete dam across the creek, a water conduit 1,700 feet long, a concrete powerhouse containing a 350 kw generator, a 7-mile long transmission line, and other appurtenant facilities.

According to the application, the approval herein sought is part of a merger transaction between the proposed transferor and transferee. Application for authority to consummate the merger has been filed with the Commission, designated as Docket No. E–7079. The joint Applicants herein request that Commission approval of the transfer of the licenses involved be made effective as of the effective date of the merger.

The transferee will submit certified copies of all instruments of conveyance whereby title to the project properties is conveyed to it, upon the completion of such conveyance, if and when the Commission shall have given its approval to the proposed transfer.

The Commission finds:

(1) The proposed transferee is a corporation organized under the laws of the State of Maine; is authorized to do business in the States of Utah, Idaho and Wyoming; and as evidence of its compliance with all applicable State laws has submitted: (a) certified copies of its articles of incorporation and of its certificates of authority to do business within the States of Idaho and Wyoming; (b) certificates of water rights and of convenience and necessity heretofore granted to the transferor and proposed to be transferred to the proposed transferee; and (c) copies of joint applications of Applicants to the Public Service Commissions of Idaho and Wyoming for approval of transfer of the transferor's property, including the licensed project properties, to the proposed transferee.

(2) Commission approval of transfer, upon the conditions set forth herein, of the licenses for Project Nos. 749 and 1740 to the proposed transferee will not be inconsistent with the public interest.

The Commission orders:

(A) The transfer of the licenses for Project Nos. 749 and 1740 from California-Pacific Utilities Company to Utah Power & Light Company is hereby approved, effective as of the effective date of the merger referred to above, subject to Section 9.3 of the Commission's Regulations under the Federal Power Act, and subject to the further condition that the net investment in the projects shall not be increased on account of the transfer; provided that the transferee shall be subject to the conditions and obligations of the licenses and to all the provisions of the Act to the same extent as though it were the original licensee for the project.

(B) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Federal Power Act, and failure to file such an application shall constitute acceptance of the licenses for Project Nos. 749 and 1740 by Utah Power & Light Company. In acknowledgment of the acceptance of such licenses, this instrument shall be signed for Utah Power & Light Company and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

CRESCENT OIL AND GAS CORPORATION (OPERATOR), ET AL., DOCKET NOS. G-13511, G-16962, G-19735, RI61-241, RI62-81, AND RI63-141

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF CONTRACT AMENDMENT, REQUIRING REFUNDS, AND TERMINATING PROCEEDINGS

(Issued April 17, 1963)

On March 1, 1963, Crescent Oil and Gas Corporation (Operator), *et al.*, (Crescent) filed an Offer of Settlement in the above-designated rate suspension proceedings, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. All of these proceedings relate to the jurisdictional sale of natural gas by Crescent, under its FPC Gas Rate Schedule No. 1, to Texas Eastern Transmission Corporation (Texas Eastern) from the Waskom Field, Panola County, Texas (Railroad Commission District No. 6).

The following table sets forth the date pertinent to the proceedings herein.

Docket number	Supplement number	Effective rate ¢/Mcf [1]	Date rate became effective subject to refund
G-13511	2	14.4	Apr. 2, 1958
G-16962	8	14.6	Apr. 23, 1959
G-19735	9	14.8	Apr. 1, 1960
RI61-241	10	15.0	Apr. 24, 1961
RI62-81	11	15.2	Apr. 1, 1962
RI63-141	12	15.4	(2)

[1] Pressure base is 14.65 psia.

[2] Rate suspended until April 1, 1963, and thereafter until such further time as it is made effective in accordance with the provisions of the Natural Gas Act. No motion has been tendered by Crescent under Section 4(e) of the Act to place the rate in effect subject to refund.

Under the terms of the offer, Crescent proposes to delete the favored-nation and periodic escalation provisions from the rate schedule involved, and to establish a settlement rate of 15.0¢ per Mcf, inclusive of present tax reimbursement. Further, Crescent proposes to refund to Texas Eastern all monies collected in excess of 15.0¢ per Mcf in Docket No. RI62–81.

In support of its offer, Crescent cites the deletion of the favored-nation and periodic escalation provisions from its gas purchase contract with Texas Eastern, and states that such provisions were important elements of consideration required by Crescent under the contract for the long-term commitment of its gas reserves to the performance of the contract. Texas Eastern has concurred in the offer and has agreed to execute the contract amendment provided for therein. No protests have been received from any of the interveners in these proceedings.

Since the proposed settlement rate of 15.0¢ per Mcf at 14.65 psia is acceptable under the provisions of the Second Amendment[1] to the Commission's Statement of General Policy No. 61–1,[2] for jurisdictional sales of natural gas in Texas Railroad Commission District No. 6, it is believed that the public interest will best be served by accepting Crescent's proposed settlement as hereinafter set forth. The proposed settlement rate should be made effective as of the date of issuance of this order.

However, we desire to make it clear that acceptance of the Offer of Settlement shall not be construed as approval of any future increased rate proposed by Crescent.

The Commission finds:

The proposed settlement of the above-designated proceedings, on the basis described herein, as more fully set forth in the Offer of Settlement filed by Crescent with the Commission on March 1, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by Crescent with the Commission on March 1, 1963, is hereby approved in accordance with the provisions of this order.

(B) Crescent shall file, within 30 days from the date of issuance of this order, a contractual amendment to its FPC Gas Rate Schedule No. 1, which Crescent shall execute with Texas Eastern in conformity with Crescent's Offer of Settlement in all respects. The contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Within 30 days from the date of issuance of this order, Crescent shall refund to Texas Eastern all amounts collected under its FPC Gas Rate Schedule No. 1, in Docket No. RI62–81, in excess of the settlement rate of 15.0¢ per Mcf, together with simple interest at the rate of 7% per annum, from the date of receipt of such excess amounts by Crescent to the date of refund. Crescent shall bear all costs incidental to the making of such refunds.

(D) Within 45 days from the date of issuance of this order, Crescent shall report to the Commission in writing and under oath, the details of its calculations resulting in refunds ordered pursuant to paragraph (B) above, together with a copy of a release from Texas Eastern with respect to such refunds.

(E) Upon notification by the Secretary of the Commission that Crescent has complied with the terms and conditions of this order, the rate and charge of

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[1] Issued December 20, 1960, 24 FPC 1107; amended by Order No. 264, in Docket No. R–234, issued March 27, 1963, 29 FPC 589.

[2] Issued September 28, 1960, 24 FPC 818 (18 CFR, Chapter I, Part 2, Section 2.56).

15.0¢ per Mcf, including present tax reimbursement, specified in the Offer of Settlement shall be effective as of the date of issuance of this order, the above-designated proceedings shall be deemed terminated, and Crescent's refund obligations with respect to the above-designated proceedings shall be deemed to be discharged.

(F) The acceptance of this Offer of Settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending or hereafter instituted by or against Crescent.

OPINION NO. 386

CITY OF GRANT CITY, MISSOURI, DOCKET NO. CP62-303; NEW LONDON GAS COMPANY, DOCKET NO. CP63-20; TOWN OF WINFIELD, IOWA, DOCKET NO. CP63-21

OPINION AND ORDER ADOPTING IN PART AND MODIFYING IN PART THE DECISION OF THE PRESIDING EXAMINER

(Issued April 17, 1963)*

Syllabus

1. Length of each lateral to be constructed by Michigan Wisconsin through application of "10-cent formula" is to be determined by estimates based upon use of 4-inch diameter pipe. P. 757.
2. Size of pipe to be installed and character of facilities and equipment maintained by pipeline are matters which affect the public interest. P. 757.
3. Distinguishing *Midwestern* Commission rejects contention that inclusion of small industrial sale in volume used in computing "10-cent formula" should have been conditioned on submission of 10-year contract. P. 758.
4. Under Section 7(a) of the Natural Gas Act, Commission *directs* Michigan Wisconsin to establish physical connection of its natural gas facilities with applicants proposed facilities, and sell and deliver natural gas to applicants. P. 759.

Albert J. Feigen, for City of Grant City, Missouri, New London Gas Company and Town of Winfield, Iowa

Charles V. Shannon and *Louis Flax*, for Michigan Wisconsin Pipe Line Company

Agnes Mae Wilson, for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

WOODWARD, *Commissioner:*

This consolidated proceeding is before us on exceptions filed by Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) to the Presiding Examiner's Initial Decision issued January 7, 1963. That Decision would approve three separate applications filed pursuant to Section 7(a) of the Natural Gas Act, seeking an order directing Michigan Wisconsin to establish physical connections of its transportation facilities with facilities proposed to be constructed by the applicants and to sell and deliver to the applicants a specified volume of gas.

The application of the City of Grant City (Grant City), a municipal corporation, located in Worth County, Missouri, was filed on June 26, 1962. Grant City

*Initial decision appears on p. 760.

estimates its annual and peak day requirements for the first three years of operation as follows:

Requirements

Year of operation	Peak day (Mcf)	Annual (Mcf)
1st	797	66,258
2d	874	72,754
3d	951	79,249

Grant City estimates its project costs to be $225,000, which will be financed by the sale of revenue bonds; further, it is also estimated that the project will require the expenditure of $51,796 by Michigan Wisconsin in accordance with its "10-cent formula" for construction of lateral lines.

New London Gas Company (New London) a public utility organized under the laws of the State of Iowa, filed its application on July 19, 1962. New London estimates the annual and peak day requirements for the first three years of operation for service to the Town of Morning Sun, Iowa, as follows:

Year of operation	Peak day (Mcf)	(Volumes—Mcf at 14.73 psia) annual
1st	216	43,230
2d	413	62,210
3d	468	69,210

New London requests that Michigan Wisconsin construct a portion of the required lateral line from a point on its main line to a measuring station located approximately 2.60 miles north of the main transmission pipeline. It is estimated that the project will require the expenditure of $46,150 by Michigan Wisconsin in accordance with its "10-cent formula" for construction of lateral lines. New London estimates that the cost of the proposed project will be $138,460, which will be financed by the sale of stock and a long-term loan.

The Town of Winfield, Iowa (Winfield), a municipal corporation located in Henry County, Iowa, filed its application on July 20, 1962. Winfield estimates its annual and peak day requirements for the first three years of operation as follows:

Year of operation	Peak day (Mcf)	(Volumes—Mcf) annual
1st	264	26,330
2d	435	44,760
3d	591	59,570

Winfield proposes, that, on the basis of the "10-cent formula," Michigan Wisconsin will construct a lateral line from a point on its main transmission line in Iowa to a measuring station to be located approximately 2.21 miles north of its main pipeline at an estimated cost of $39,800. The total cost of constructing the proposed distribution system and the Winfield portion of the lateral line will be approximately $187,000 which will be financed by the sale of revenue bonds.

Pursuant to notice issued by the Commission on September 11, 1962, this proceeding came on for hearing on October 10 and 11, 1962. Evidence was presented by applicants in support of their applications and applicants witnesses were

cross-examined. Thereafter, Michigan Wisconsin presented a rebuttal witness. After cross-examination of this witness, no further evidence, either in support of or in opposition to the application was introduced.

The Presiding Examiner found that from the requirements for service projected in the record, 2-inch diameter pipe would be adequate for the service proposed and that the lateral facilities would extend a length to be determined by the amount of dollars derived from the application of the "10-cent formula." The Examiner would also impose a condition requiring public advertisement by Michigan Wisconsin for competitive bids from contractors with respect to the construction of its portion of the lateral line involved in these proceedings.

Considering the facts of record, the basic elements properly to be considered in determining public convenience and necessity, as contained in the Natural Gas Act, and as applied in Commission and judicial decisions, have been amply satisfied and we so find.

The principal issue in this proceeding is whether Michigan Wisconsin should be required to construct its portion of the lateral lines with 2-inch or 4-inch diameter pipe.

Applicants, Michigan Wisconsin and the staff of this Commission agree that the laterals to each community proposed to be constructed by Michigan Wisconsin are to be determined by application of its "10-cent formula." The formula is set forth as follows:

> The operating costs of the lateral or the portion of the lateral to be installed by Michigan Wisconsin shall not exceed 10 cents per Mcf on the basis of the estimated annual firm sales to the distribution project in the third year. In the formula, the operating costs are set out as 15% of the estimated costs of construction of the lateral, or portion of the lateral and appurtenant facilities,

the 15% consisting of the following elements:

Return 6%
Income Taxes 3%
General Taxes 1.5%
Depreciation 3.5%
Operation and maintenance 1%

Allegedly, the "10-cent formula" is a method by which economic feasibility of Section 7(a) applications may be tested in an objective manner and is also an attempt to balance equities between existing and proposed customers of Michigan Wisconsin. By application, the third year's firm sales are multiplied by 10 cents per Mcf and, the resulting computation is divided by 15% of estimated costs, resulting in the total amount of dollars Michigan Wisconsin will spend on laterals to be constructed. In short, the formula produces a contribution by the pipeline of 66⅔ cents per Mcf of estimated third year sales.

Michigan Wisconsin in its exceptions contends that the Examiner erred in that he failed to find:

(1) That it is more economical to install 4-inch pipe and avoid the increased cost of subsequent looping as well as unnecessary cost of maintaining replacement parts for smaller diameter pipe, including pipe lengths, valves and fittings.

(2) That the Commission has previously decided that the cost of construction to be undertaken by Michigan Wisconsin under the "10-cent formula" should be determined upon the basis of estimates submitted by Michigan Wisconsin's engineering witness and its established policy of not installing pipe which is less than 4 inches in diameter.

(3) That where construction of the lateral pursuant to the "10-cent formula" is to be predicated on the sale of interruptible industrial gas by the distributor

to a customer an executed contract for at least 10 years service must be tendered (citing *Midwestern Gas Transmission Co.*, 22 FPC 775, 798 (1959): *Michigan Wisconsin Pipeline Company*, 24 FPC 177, 181, 185, 190 (1960)).

(4) That Michigan Wisconsin had no notice or opportunity to be heard with respect to the imposition of a condition requiring public advertisement seeking bids from various contractors to undertake construction work.

The exceptions will be discussed seriatim. For the reasons set forth below, we conclude that the length of each lateral to be constructed by Michigan Wisconsin through application of the "10-cent formula" is to be determined by estimates based upon the use of 4-inch diameter pipe.

The applicants contend that the cost figures used in applying the "10-cent formula" should be those associated with realistic estimates based on actual local experience, actual bids and on the use of pipe material commensurate with sound engineering calculations as well as the future needs of the markets proposed to be served; that the construction of a lateral line with pipe of any diameter over two inches is unnecessary and wasteful. Consequently, they say, application of the "10-cent formula" should be based on the minimum diameter pipeline adequate to serve the needs of the communities through the reasonable life of the projects.

Michigan Wisconsin argues that the cost of construction to be undertaken should be determined on the basis of estimates detailed and supported on the record by its engineers with minimum size pipe of 4-inch diameter; that pipe of less size should not be installed in short lateral construction. Further, Michigan Wisconsin asserts that if it were required to install pipe of smaller diameter, it would be necessary to increase its current inventory since, as a matter of course, 2-inch pipe has not been required in its operations and is not carried in company stock.

In addition, it would also be necessary to warehouse replacement parts and equipment to repair smaller diameter pipe should the need arise. The added expense would be a burden and, conceivably, could affect future rates to its customers.

The size of pipe to be installed by a pipeline and the character of facilities and equipment maintained by pipelines are matters which affect the public interest. Sound judgment must be applied to determine whether the construction of 2-inch or 4-inch laterals is warranted, in light of all circumstances and with particular reference to the needs and conditions relating to the operation of Michigan Wisconsin and its prospective customers.

All parties agree that their proposed projects would still be economically feasible if the portion of the laterals to be constructed by Michigan Wisconsin were determined upon the cost estimates of its engineering witness and the installation of 4-inch diameter pipe. No additional expenditure will be required of Grant City since its contractor has agreed to install, at no additional cost, the extra 0.8 mile of pipe required if the 4-inch lateral is constructed by Michigan Wisconsin. According to the presentations submitted by the applicants, New London will be required to spend an additional $4,470 and Winfield an additional $2,430 in order to transport natural gas from the point of interconnection to the city gates.

We do not believe that the relatively small additional costs involved outweigh the evident advantages to these communities which will result through the installation of 4-inch laterals. The 4-inch diameter pipe has five times the capacity of a 2-inch lateral and will permit adequate service to the applicants without the necessity of further construction should their market demands increase substantially in the future. Obviously, on an overall basis, it is more

economical to install at least a 4-inch diameter lateral initially rather than install a smaller diameter lateral with the possibility that it would have to be looped as the load grows when service demands exceed the pipe capacity. Service demands, of course, can require additional facilities no matter what size the pipe is originally installed. The caveat is only to analyze the market demand as accurately as possible at the time of initial construction. Although the Examiner found that the towns of Morning Sun and Winfield would be unlikely to experience substantial population increases, we believe the relatively small incremental cost of the larger pipe justifies providing for the recognized possibility that such growth will occur. We will not require Michigan Wisconsin to install smaller size which would not provide an economical margin for such growth.

This represents a fair and reasonable accommodation of the conflicting interests presented by this record and provides a sound basis for disposing of the controversy.

Among the projected third-year sales estimated by the applicants, and accepted by the Examiner, is an interruptible sale of 59 Mcf on a peak day by New London to a rendering plant to be located in Morning Sun. Michigan Wisconsin contends that inclusion of the sale in the third year volume used in computing the "10-cent formula" should have been conditioned on the submission of a 10-year contract covering the sale, citing *Midwestern Gas Transmission, et al.*, 22 FPC 775, 798 and dictum in *Michigan Wisconsin Pipeline Company*, 24 FPC 177, 181. In the *Midwestern Gas* case, 170,000 Mcf of annual sales were projected to be made to customers in an area where coal was less costly than gas. In light of the questionable character of those industrial loads the Commission did not require application of the "10-cent formula" unless the 7(a) applicant filed executed 10-year contracts for service. In the instant proceeding, however, the sale to the rendering plant is not seriously questioned and the volumes involved are relatively inconsequential. Additionally, as found by the Presiding Examiner, this gas can be used in the New London municipal power plant in New London, Iowa, if it is not sold to the rendering plant. While the delivery would be from a different lateral and, standing alone, would not be properly included in volumes used in applying the "10-cent formula" to the Morning Sun lateral, it does provide added insurance that the 59 Mcf per day will be delivered and this fortifies our determination not to require the 10-year contract for the rendering plant sale.

Michigan Wisconsin excepts to the requirement by the Examiner of public advertisement for bids to undertake construction work. Since there is no suggestion in the briefs or in the record that such a proviso is necessary to protect the public interest in this proceeding we find no reason for the imposition of such a condition. Accordingly, this provision shall be stricken from the order.

The Commission further finds:

(1) Michigan Wisconsin Pipeline Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural gas company" within the meaning of the Natural Gas Act, as amended, as heretofore found by the Commission in its Order of November 30, 1946 in Docket No. G–669 (5 FPC 953).

(2) The City of Grant City, Missouri and the Town of Winfield, Iowa, are municipal corporations and are legally authorized to construct, own and operate local gas distribution systems.

(3) New London Gas Company is a public utility organized and existing under and by virtue of the laws of the State of Iowa and is engaged in the distribution of natural gas in said State.

(4) It is necessary and desirable in the public interest that the Commission, by order, direct Michigan Wisconsin Pipeline Company to establish physical connection of its transportation facilities with the facilites proposed to be constructed by the City of Grant City, Missouri and the Town of Winfield, Iowa, respectively and to sell and deliver 951 Mcf of natural gas per day to Grant City, Missouri and 591 Mcf of natural gas per day to Winfield, Iowa for resale and distribution in said respective communities.

(5) It is necessary and desirable in the public interest that the Commission, by order, direct Michigan Wisconsin Pipeline Company to establish physical connection of its transportation facilities with the facilities proposed to be constructed by New London Gas Company and to sell and deliver to New London Gas Company an additional volume of 468 Mcf of natural gas per day for resale and distribution in the Town of Morning Sun, Iowa.

(6) The lateral pipeline facilities ordered to be constructed by Michigan Wisconsin Pipeline Company shall include pipe with a diameter of 4-inch and a wall thickness of 0.237 inch, and shall extend a length determined by the amount of dollars derived from the application of the Michigan Wisconsin "10-cent formula" as defined in these proceedings and as heretofore approved by the Commission.

(7) The requirement that Michigan Wisconsin serve applicants as above set forth will not place any undue burden upon it nor require it to enlarge its facilities, nor impair its ability to render adequate service to its existing customers.

(8) The Section 7(a) applicants for the service sought in these proceedings should be prepared to receive service from Michigan Wisconsin Pipeline Company within one year from the date of the issuance of the order herein.

(9) Except as granted herein, the exceptions to the Presiding Examiner's Initial Decision should be and are hereby denied.

The Commission orders:

(A) Michigan Wisconsin Pipeline Company be and the same is hereby directed to establish physical connection of its natural gas transportation facilities with the natural gas facilities proposed to be constructed by the City of Grant City, Missouri, New London Gas Company for service in Morning Sun, Iowa and the Town of Winfield, Iowa as hereinbefore described and more fully set forth in the record in these consolidated proceedings, and to sell and deliver 951 Mcf of natural gas per day to Grant City, Missouri, 591 Mcf of natural gas per day to Winfield, Iowa and 468 Mcf of natural gas per day to New London Gas Company for resale and distribution in the Town of Morning Sun, Iowa.

(B) Michigan Wisconsin Pipeline Company shall apply its "10-cent formula," as more fully described in these proceedings, in order to determine the dollar amount of expenditures to be made by Michigan Wisconsin for the cost of the transportation facilities connecting Michigan Wisconsin with the facilities of the City of Grant City, Missouri, New London Gas Company for service to Morning Sun, Iowa and to the Town of Winfield, Iowa, and that such expenditures by Michigan Wisconsin for connecting pipe transportation facilities shall be for pipe with a diameter of four inches and a wall thickness of 0.237 inch.

(C) The date of commencement of service to the City of Grant City, Missouri, New London Gas Company for service to Morning Sun, Iowa and the Town of Winfield, Iowa, shall be reported by Michigan Wisconsin Pipeline Company to this Commission in writing within thirty days after the commencement of such service. The Section 7(a) applicants herein should be prepared to receive service from Michigan Wisconsin Pipeline Company within one year from the date of the issuance of the Order herein, in accordance with Section 157.20(b) of the Commission's Regulations.

737-369—64——51

(D) The Presiding Examiner's Initial Decision issued herein on January 7, 1963, is hereby modified as set forth in this opinion and as so modified is adopted by the Commission to the extent not inconsistent herewith. Exceptions to the Examiner's Decision not herein granted are denied.

INITIAL DECISION

UPON APPLICATIONS PURSUANT TO SECTION 7(a) OF THE NATURAL GAS ACT

(Issued January 7, 1963)

JENSCH, *Presiding Examiner:* The single major issue involved in these consolidated proceedings requires a determination of the method by which a so-called "10-cent formula"[1] devised by a pipeline company for Section 7(a) applications shall be applied[2] to measure the length and size of interconnecting pipeline facilities. No issue is raised in these proceedings respecting the adequacy of gas supply, nor of the financing, and no substantial issue involves market requirements. For these reasons, this decision has somewhat limited the statement of facts to relate principally to the major issue involved.

Three Section 7(a) applications have been filed seeking orders of the Commission directing Michigan Wisconsin Pipe Line Company (Mich Wis) to establish physical connections of its transportation facilities with facilities proposed to be constructed by each applicant, and to sell and deliver to the applicants the designated volumes of gas.

Michigan Wisconsin counsel explained as a reason for the 10-cent formula, as follows:

> * * * when you come to the balancing of equities between this new market seeking sales which, in many instances, we are sort of throwing a concession to them, because many of these projects wouldn't be feasible except for this formula * * *

In the instant proceeding, Mich Wis made no contention that these projects were not feasible.

In Docket No. CP62-303, the City of Grant City, a municipal corporation located in Worth County, Missouri, filed its Section 7(a) application on June 26,

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[1] The apparent stipulation or agreement by the participants in this proceeding that each application herein is controlled by the Michigan Wisconsin Pipe Line Company "10-cent formula" obviates any separate determination whether the "10-cent formula" is consistent with the requirements of the public interest. Michigan Wisconsin's counsel agreed ["Well, that is right.] that * * * it is a public interest consideration in each case * * *"

[2] The 10-cent formula is best described by reference to an enumeration of the components, rather than by a consideration of the reason, if any, for their inclusion. The formula is set forth by Mich Wis as follows:

> * * * first, by multiplying the estimated third year annual requirements of each project by 10¢ per Mcf, and then, dividing the result by 15 per cent to obtain the amount Michigan-Wisconsin could expend for each lateral * * *" pipeline connection. The pipeline company explained that the formula was devised so that its existing customers would not be burdened with any uneconomical local distribution projects. Upon this basis, application of the formula is intended to produce only a dollar amount figure, which is needed for rate base considerations. In this proceeding, Mich Wis is seeking to extend the character of the formula by its contention that the formula also selects the size of pipe that can be purchased and installed with those dollars. Mich Wis has cited cases which it contends support this extension of the formula; it appears, however, that while size of pipe may have been involved in those prior proceedings, the Commission rulings do not explicitly determine the issue whether the formula selects the size of the pipe. The Commission decisions which involve pipe size appear to have been based upon Commission determinations of the requirements of the public interest for pipe size and are not based upon the scope of the company formula except as to dollar computation.

1962. Grant City estimates its annual and peak day requirements for the proposed first three years of operation as follows:

Year of operation	Requirements	
	Peak day (Mcf)	Annual (Mcf)
1st	797	66, 258
2d	874	72, 754
3d	951	79, 249

Grant City estimates its cost of the project to be $225,000, which will be financed by the sale of revenue bonds. Grant City also estimated that the project will require the expenditure of $51,796 by Mich Wis in accordance with its 10-cent formula for the construction of lateral lines.

The evidence concerning the population of 1061, the number of 425 houses, 60 commercial establishments, four churches, and two schools was presented in connection with the surveys and interviews conducted in connection with the market analysis. Present residential space heating fuel use in the area is principally fuel oil, with some L.P. gas also used, as is a small amount of coal. The larger portion of commercial establishments use L.P. gas, followed by those who use fuel oil and coal in that order. Grant City presented evidence of the rates it proposed to charge and comparisons were made between such proposed rates and present costs of using other fuels. In summary, it appears to be advantageous upon the basis of such calculations for the majority of Grant City users to use natural gas.

Grant City proposes to locate its city gate facilities at a point which is 6.2 miles from the Mich Wis pipeline facilities.

Grant City's financing program will provide a debt service coverage of 1.97, although this would be increased to 2.01 if the recently proposed rate settlement stipulation, approved by a Presiding Examiner, is accepted by the Commission. Grant City has held the necessary authorizing election for a bond sale in the amount of $225,000.

Mich Wis has in a prior certificate proceeding (Docket No. CP62–212) allocated sufficient gas for Grant City and the Commission has approved that contingent allocation.

While the chief dispute in this proceeding is whether Mich Wis should construct its portion of the lateral with 2-inch or 4-inch pipe, the feasibility of the Grant City project will not be affected whichever diameter pipe is provided in the Order to be issued herein.

In Docket No. CP63–20, New London Gas Company filed its Section 7(a) application on July 19, 1962. New London is a public utility organized under the laws of the State of Iowa, and presently serves New London but in the application filed in this docket, it proposes service to Morning Sun, Iowa.

New London estimates the annual and peak day requirements for the first three years of operation in Morning Sun as follows:

Year of operation	Volumes—Mcf at 14.73 psia	
	Peak day	Annual
1st	216	41, 230
2d	413	62, 850
3d	468	69, 210

New London estimates that the cost of its project will be $138,460 which will be financed by the sale of stock and a long term loan.

The town of Morning Sun has a population of 876, and apparently is in a plateau, with no likely substantial increases in population. The market survey was based upon a house to house canvass conducted under the supervision of an engineer familar with this work in this territory. The same engineer presented evidence of engineering requirements for the distribution facilities, and the revenues expected to be derived from the proposed rates. Adequate foundation has been presented to warrant the determination that the project is feasible upon the basis proposed.

New London Gas Company proposes to issue additional stock in the amount of $50,000 which has been subscribed, and a commitment is in the record respecting the balance of financing needed, this by a loan of $90,000. The debt service coverage ratio based on the third year of operations is 2.2.

One feature of the proposed Morning Sun service, distinct from the other two consolidated applications, pertains to an interruptible load to a public school and also to a rendering plant. Mich Wis contends that a firm contract must be shown in the record before consideration may be given to the amount of gas that would be needed by the rendering plant. Both the Staff and New London Gas Company are agreed that the Morning Sun project is feasible whether or not this industrial load be reflected in a firm contract. The consideration of this volume of gas is important, however, in determining the length of line that Mich Wis should be directed to construct upon the assumption that its 10-cent formula is equated with the public interest. To be noted, however, is that New London Gas Company has shown for the first year of proposed service for Morning Sun, that any portion of gas not used initially in Morning Sun, could be used in the New London Municipal Power Plant. While no similar showing is made for the third year (apparently because of the assumption that the rendering plant will be using the gas), it cannot be assumed that with such interchange possible between communities, that the volumes estimated to be sold to a rendering plant in Morning Sun, even without a contract, will be lost from distribution use entirely.[3] In addition, competent engineering and market survey evidence is that the rendering plant load will be added,[4] and the proposed distribution rates show savings to the plant by the use of natural gas. These factors are entitled to substantial weight. Therefore, the volumes expected to be sold to the rendering plant are included in the total of volumes of gas proposed to be sold on an annual basis and are thus used in a determination for the length of lateral line that Mich Wis will construct.

The quantities of gas needed for service in Morning Sun have been allocated upon the same contingent basis as was done for Grant City, and this procedure was approved by the Commission in the Mich Wis certificate proceeding. Morning Sun is located 3.06 miles from the Mich Wis main transmission pipeline.

In Docket No. CP63–21, the Town of Winfield, Iowa, filed its Section 7(a)

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[3] New London Gas Company represented that it proposed to purchase the quantities of gas requested on a contract demand firm purchase, which appears adequate financial assurance to Mich Wis.

[4] The assertion by Mich Wis that this interruptible load be placed under firm contract as a predicate for authorization for service is termed by New London's counsel as an example of how Mich Wis seeks first to establish the use of the 10-cent formula, and then "whittle away" at its application, to thereby "* * * decrease the amount of dollars available for construction * * *"

application on July 20, 1962. The Town estimates its annual and peak day requirements for the first three years of operation as follows:

Year of operation	Volumes—Mcf	
	Peak day	Annual
1st	264	26,390
2d	435	44,760
3d	591	59,570

The Town estimates that the total cost of constructing the proposed distribution system, and the Winfield portion of lateral line will be approximately $187,000, which will be financed by the sale of revenue bonds.

The market data and anticipated revenues from proposed rate schedules for the Winfield project were presented by the same engineering witness who appeared regarding the Morning Sun service. No participant contests the foundation for this evidence, and it is found adequate. Winfield has a population of 865 and appears to be in a similar plateau of stability with no likely substantial increase in size. There are a total of 242 residential customers projected for third year operations, 216 of whom will be space heating customers. The evidence also projects 42 commercial customers, 41 of whom will use gas for space heating. One consumer, a public school, is classified as an industrial user.

The Town of Winfield has secured a firm commitment from the Community Facilities Administration of the Housing and Home Finance Agency of the United States Government for the necessary financing of the project. The financing will be done by first mortgage gas revenue bonds. The debt service coverage ratio based on third year operations is 1.6 and the fifth year is 1.8.

The Town of Winfield also owns and operates a water and sewer system which has been financed by general obligation bonds, on which there has been no default. Towns neighboring Winfield have natural gas service and this application seeks to provide a community improvement similar to those in nearby towns.

Gas supply is available from Mich Wis which has a similar contingent allocation provided in its prior certificate proceeding, Docket No. CP62-212.

The single major dispute in this proceeding is concerned with the size of pipe that Mich Wis should construct. As reflected herein, the application of the 10-cent formula produces a dollar amount figure only. Mich Wis has explained the purpose of the formula to be a convenient method to use in an effort to avoid any uneconomic financial burdens to the existing customers of Mich Wis. Upon that basis, if the dollar amount is determined by the formula, the purpose of the method would appear to be served. The position asserted by Mich Wis seeking to go further and select pipe sizes which can be purchased is not supported by persuasive contention. First, Mich Wis states that it only has 4-inch pipe in stock in its warehouses. Mich Wis says it is an inconvenience to carry 2-inch pipe in stock.[5] These two statements do not seem relevant to public con-

[5] The problems of warehousing 2-inch size pipe were alluded to by Mich Wis counsel; there was no evidence presented that the inventory would get out of control, nor that warehouse space or cost considerations were insurmountable. A witness for Mich Wis testified in effect that regardless of the needs of the service here involved, the inventory schedule of Mich Wis, for example, requires the use of different wall size pipe; "* * * I believe a pipe of a lesser wall thickness would be adequate to withstand these pressures, but the reason we go to a .237-inch wall is because this is a stock item, and we would have to increase our stock * * * entail additional cost * * *."

venience and necessity considerations. Second, Mich Wis states that it may be necessary to sometime loop a 2-inch pipe when service demands exceed the capacity of that pipe. That possibility probably always exists for whatever size pipe is selected; in fact as the Section 7(a) applicants point out in their brief, Mich Wis has had to loop 4-inch pipe on several occasions; but it may be noted also that there has been at least one instance, and there may be more, of a looping needed for an original 2-inch pipe installation. Service demands, of course, can require additional facilities no matter what size of pipe is originally installed. The caveat is only to analyze the market demand as accurately as possible at the time of initial construction. Importantly, in this proceeding is that the competent engineering and market data reflects the need of only 2-inch size lateral line pipe. Mich Wis did not refute that evidence by any market data applicable to these three communities. Mich Wis presented evidence of some unrelated and for ought that appears, dissimilar community service where a different diameter pipe was used. Specifically on market data bases, Mich Wis has not presented relevant evidence that would militate against the showing of market needs for these three communities, which alone can measure the requirements for pipe size. In the formal answer filed by Mich Wis to each of these three Section 7(a) applications, it alleged that perhaps the market needs of the communities were overestimated. The brief, however, submitted by Mich Wis at no place contested or disputed the market data of the applicants. The brief filed by Mich Wis stated that its evidence related to "* * * the portion of the lateral which would be appropriate[6] for Michigan Wisconsin to construct for each project under the 10-cent formula." To all contentions that logic and common sense require only a 2-inch pipe size, Mich Wis answers that its formula permits only a 4-inch line to be constructed.[7] This contention appears somewhat contrary to the issue raised by the Mich Wis answer filed in these proceedings wherein it appeared that Mich Wis wanted to be assured concerning the actual market demand in the communities seeking service.

As a final contention that the 10-cent formula also selects the pipe diameter size, Mich Wis cited several Commission cases wherein, by excerpts from transcripts, it appears that witnesses had contended for either the 2-inch or 4-inch diameter pipes. No citation was given of any determination by the Commission explicitly ruling on pipe size; the rulings of the Commission which have been cited and quoted in the Mich Wis brief did conclude however, that the 10-cent formula should be adopted for those cases. Mich Wis contends that the determination in this case must select the 4-inch diameter size pipe, and anything

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[6] The definition of the "appropriate" portion to be constructed by Mich Wis was outlined by its witness who prepared cost estimates and specifications for this work. This witness included a consideration of topography, etc. Mich Wis emphasized that the witness had made a personal aerial reconnaissance of the area. The witness added that it had been raining at the time of his flight, but that the clouds parted in time for him to see the portion of the ground, in which he concluded the lateral pipelines would be constructed. It is concluded that the evidence presented of the personal aerial reconnaissance added little support by way of added foundation for the testimony from this witness.

[7] Mich Wis has cited the case of *Michigan Gas and Electric Co.* v. *FPC*, 290 F.2d 374 (1961) as decisive in this proceeding. In that case, Mich Wis successfully resisted the use of the 10-cent formula by its argument that the formula applies only to short line laterals, and that the economic feasibility of an extension is determined by the number of dollars derived from the formula involved. No reference was made to 4-inch size pipe in the opinion. The Staff in its brief and in its argument for a 4-inch size pipe did not rely upon this court opinion, but rather, relied upon a Commission decision where apparently the public interest determination warranted a 4-inch pipe, and not that the formula required it. The case relied upon by the Staff is Opinion No. 336, 24 FPC 177.

to the contrary would be a "reversal" of Commission decision.[8] To the contrary however, no cases are cited which expressly state that the Mich Wis formula always selects the pipe size. In fact, the cases cited by Mich Wis are consistent with the interpretation that in those cases, the public interest, measured by that evidence, warranted the pipe size advocated by Mich Wis. It is concluded that the Commission is not precluded by any precedent from considering what size of pipe should be constructed in this proceeding and determined by what the public convenience and necessity require. The Mich Wis formula is neither all inclusive nor constantly expanding to embrace all facets of pipeline construction to thus preclude consideration of what serves of public interest the best. The Mich Wis formula is, at the most, only a method for computing the extent of financial contribution that Mich Wis will make for lateral line construction. Beyond that limit, it would be contrary to the Natural Gas Act to permit the company formula to outweigh the requirements of the public interest.

The evidence that is material, as Mich Wis recognizes in its formal answer to the applications, relates to market demands. It appears undisputed from the requirements for service that a 2-inch diameter pipe will be adequate for the service needed. If Mich Wis were to be directed to construct a 4-inch diameter pipe for its portion of the lateral line connection, four fifths[9] of the 4-inch line would not be used or useful to the service needed. Equally important, if Mich Wis were to be allowed to construct a 4-inch line, then the local distribution organizations would have to add to their rate bases those costs which would have to be incurred to extend their connecting pipeline facilities for the greater distance since, on that assumption, the Mich Wis 4-inch line would not extend as far as a 2-inch line. With local distribution rate bases thus increased, the rates of the local consumers would be expected to be increased proportionately to the increase in cost of the rate base. The Mich Wis 10-cent formula would thus be used to indirectly and unnecessarily raise local rates, which while not under the jurisdiction of the Commission, cannot be disregarded in a consideration of advantages to the public interest by the authorizations issued by this Commission.

These determinations apply to each of the three Section 7(a) applications. The Order herein will determine the length of pipe based upon a 2-inch diameter size pipe. The evidence in this record has presented the computations of distances to reflect the different pipe sizes and is accepted as the basis for the orders entered herein.

One additional aspect of the lateral line construction requires specific consideration. The applicants contend that Mich Wis estimates of costs of the construction are somewhat inflated, with various administrative overheads, contingencies,[10] etc. The Staff mentions that the costs of one lateral line construction project were "questioned". The applicants imply that by accepting the

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[8] At the hearing, Mich Wis counsel stated that he thought that "it" had all been settled, that the 10-cent formula always would be applied; the implication apparently is that no consideration need be given to the requirements of the public interest. Additional to the previously indicated commitment to the public interest as a guide, Mich Wis counsel answered as follows to the statement: "It is just a question of what the public interest is, as I see it, in each case." "Mr. Shannon: That is right."

[9] Mich Wis has emphasized that a 4-inch line has five times the capacity of a 2-inch line.

[10] The Staff questioned whether "omissions and contingencies" and "engineering and supervision" represented costs to be paid for construction or whether such items in Mich Wis computations reflected allocations made from general expenses. Mich Wis witness agreed these were: "* * * paper expenses * * *." In considering an unrelated project, Mich Wis mentioned that one construction project entailed a construction one half mile longer than a direct line in order to properly locate a meter station.

application of the 10-cent formula to determine the number of dollars that Mich Wis will supply, the applicants want to be sure that the Mich Wis payment, for lateral line construction, purchases the most pipe, and extends it for the greatest possible distance consistent with prudent and economical construction practices.[11] For two of the applicants involved herein, public moneys are involved in the construction of their portion of connecting lateral line facilities. Construction projects involving or related to the use of public moneys ordinarily involve public advertisement seeking bids from various contractors competing for the award by submission of the bid of the lowest cost. Public moneys will be affected herein to the extent that any Mich Wis costs of construction are not directly related, solely, to the gas service here concerned. Dispute will be removed, and it is consistent with and required by public convenience and necessity, that bids[12] should be sought, from pipeline construction contractors competing to achieve the lowest reasonable cost for the lateral line construction here concerned and the Order herein will so provide. This condition will not preclude Mich Wis from preparing a similar bid and if its proposal is lower than those received by it, will thereby enable Mich Wis to construct the needed pipeline facilities.

In addition to the foregoing findings and conclusions which accept, modify and reject, as herein shown, the proposed findings and conclusions submitted by the participants in this proceeding, it is determined specifically that proposed findings and conclusions submitted by Mich Wis and numbered 1 and 2 are rejected; Staff findings and conclusions numbered 1, 2, 3, 4, 5, 7, and 8 are accepted; Staff's finding and conclusion numbered 6 is rejected for lack of specificity whether the formula necessarily prescribes the size of pipe; the Section 7(a) applicants' proposed findings and conclusions and numbered 1, 2, 3, 4, 5, 6, 7 and 8 are accepted.

By way of summary, and supplementary to the foregoing findings and conclusions, also based upon a consideration of the entire record in these consolidated proceedings, the evidence adduced and the briefs filed, are the following findings and conclusions:

1. Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural gas company" within the meaning of the Natural Gas Act, as amended, as heretofore found by the Commission in its Order of November 30, 1946, in Docket No. G-669 (5 FPC 953).

2. The Towns of Grant City, Missouri and Winfield, Iowa, are municipal corporations and are legally authorized to construct, own and operate local gas distribution systems.

3. New London Gas Company is a public utility organized and existing under and by virtue of the laws of the State of Iowa and is engaged in the distribution of natural gas in said State.

4. The sale by Michigan Wisconsin Pipe Line Company of the quantities of natural gas, sought for and by the Town of Grant City, Missouri, in the amount up to 951 Mcf of natural gas per day, and for the Town of Winfield, Iowa, in the amount up to 591 Mcf of natural gas per day, and also sought by New London

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[11] A statement by the Commission (24 FPC 177), and relied upon by the Staff (Page 29 of Brief): "These past practices applicable to the application of the formula are reasonable." follows a consideration of whether "* * * the interruptible sales which are made under a 10-year contract along with the estimated firm sales * * * the meter station has been excluded * * * and applicants' estimate of cost * * * in applying the formula." It is to be noted that "these past practices" relate to the enumeration herein set forth, and not to any size of pipe, which is not specified in the decision.

[12] Mich Wis represented that it was the general practice of the company in lateral line construction projects to secure bids from independent contractors.

Gas Company in the amount up to 468 Mcf of natural gas per day for resale and distribution in Morning Sun, Iowa, as reflected in these consolidated proceedings and the construction and operation of the lateral pipeline facilities needed for said sale of natural gas in interstate commerce by Michigan Wisconsin Pipe Line Company subject to the jurisdiction of the Commission, are required by the public convenience and necessity and orders directing such sales should be issued as hereinafter provided.

5. The service hereinafter ordered to be rendered and the pipeline facilities to be constructed and operated by Michigan Wisconsin Pipe Line Company will not place any undue burden upon said natural gas company nor require it to enlarge its facilities nor impair its ability to render adequate service to its existing customers.

6. The lateral pipeline facilities ordered to be constructed and operated by Michigan Wisconsin Pipe Line Company shall include 2-inch only size pipe, and shall extend a length determined by the amount of dollars derived from the application of the Michigan Wisconsin 10-cent formula, as defined in these proceedings as a formula to determine only a dollar amount contribution to the cost of pipeline construction sought for service to Section 7(a) applicants, and said dollars so computed shall be utilized, as here found to be required by the public convenience and necessity, in construction under contracts or arrangements therefor executed after public advertisement for bids. Michigan Wisconsin is not disqualified to submit a bid which may be considered by it in comparison with bids received from other pipeline contractors so that the contract will be let to or the construction work undertaken by the lowest responsible bidder.

7. The Section 7(a) applicants for the service sought in these proceedings should be prepared to receive service from Michigan Wisconsin Pipe Line Company within one year from the date of the issuance of the Order herein, and Michigan Wisconsin should be directed to provide that service within that period of time.

ORDER

Wherefore, it is ordered, subject to review by the Commission on appeal, or review by the Commission on its own motion, as provided in its Rules of Practice, that:

(A) Michigan Wisconsin Pipe Line Company be and the same hereby is directed to establish physical connection of its natural gas transportation facilities with the natural gas facilities proposed to be constructed and operated by the City of Grant City, Missouri, New London Gas Company for service in Morning Sun, Iowa and Town of Winfield, Iowa as hereinbefore described and more fully set forth in the record in these consolidated proceedings, and to sell and deliver a maximum up to 951 Mcf of natural gas per day to the said City of Grant City, Missouri, up to 468 Mcf of natural gas per day to New London Gas Company for the proposed service to Morning Sun, Iowa, and up to 591 Mcf of natural gas per day to the Town of Winfield, Iowa, all as fully described in the record in these proceedings and the findings of this decision.

(B) Michigan Wisconsin Pipe Line Company shall apply its 10-cent formula, as described in these proceedings, in order to determine the dollar amount of the expenditure to be made by Michigan Wisconsin for the cost of the transportation facilities connecting Michigan Wisconsin with the facilities of the City of Grant City, Missouri, New London Gas Company for service to Morning Sun, Iowa and to the Town of Winfield, Iowa, and that such expenditure by Michigan Wisconsin for connecting pipe transportation facilities shall only be for 2-inch size pipe, and further the length of such 2-inch size pipe shall be

in accordance with the findings made herein and determined from the bid of the lowest reasonable bid received after public advertisement for bids to undertake the connecting transportation facilities construction work as herein provided.

(C) The date of commencement of service to the City of Grant City, Missouri, New London Gas Company for service to Morning Sun, Iowa, and the Town of Winfield, Iowa, shall be reported by Michigan Wisconsin Pipe Line Company in writing and under oath within 30 days after the commencement of such service. The said Section 7(a) applicants should be prepared to receive service from Michigan Wisconsin Pipe Line Company within one year from the date of the issuance of the Order herein, in accordance with Section 157.20(b) of the Commission's Regulations.

SAMUEL W. JENSCH,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

THE NORTHERN ELECTRIC COOPERATIVE, DOCKET NO. E-6670

SUPPLEMENTAL ORDER AUTHORIZING TRANSMISSION OF ELECTRIC ENERGY TO CANADA AND TERMINATING PRESIDENTIAL PERMIT IN PART

(Issued April 17, 1963)

The Northern Electric Cooperative (Northern), a corporation organized and existing under the laws of the State of Montana, with its principal place of business in Opheim, Montana, filed application to revise its authority to export electric energy from the United States to Canada. By order of January 18, 1957, 17 FPC 52, Applicant was authorized to export up to 50,000 kwh of electric energy per year, at a maximum rate of transmission of 80 kw (combined annual aggregate rate) at four points on the international border between the United States and Canada pursuant to Section 202(e) of the Federal Power Act. Northern also received a permit pursuant to Executive Order No. 10485 (September 3, 1953) to construct, operate and maintain these facilities at the border. The Permit specifically described four single-phase, 7.2 kv lines (Line Nos. 1 through 4), however, Line No. 4 was not constructed and Northern has been exporting energy over Line Nos. 1 through 3 only. In its present application, Northern requests that Line No. 4 be deleted from the Permit and also desires to increase the authorized limitations on exports of electric energy over the remaining three lines as follows:

Line No. 1: Increase from 8,000 kwh per year at a maximum rate of 20 kw to 20,000 kwh per year at a maximum rate of 20 kw;

Line No. 2: Increase from 7,000 kwh per year at a maximum rate of 10 kw to 12,000 kwh per year at a maximum rate of 15 kw;

Line No. 3: Increase from 14,000 kwh per year at maximum rate of 30 kw to 25,000 kwh per year at a maximum rate of 25 kw.

Written notice of the application has been given to the Board of Railroad Commissioners of Montana and to the Governor of that State. Notice of filing of the application has also been given by publication in the Federal Register on November 21, 1962 (27 F.R. 11475), stating that any person desiring to be heard or to make any protest with reference to the application should, on or before December 4, 1962 file with the Federal Power Commission, Washington 25, D.C., a petition or protest in accordance with the Commission's Rules of

Practice and Procedure. No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) The transmission of electric energy to Canada by the Northern Electric Cooperative in the amounts and at the rates as listed hereinafter will not impair the sufficiency of electric supply in the United States nor impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission:

Line No. 1—20,000 kwh per year at a rate not to exceed 20 kw;

Line No. 2—12,000 kwh per year at a rate not to exceed 15 kw;

Line No. 3—25,000 kwh per year at a rate not to exceed 25 kw.

(2) It is appropriate for the purposes of the Federal Power Act and Executive Order No. 10485, dated September 3, 1953, that authority under so much of Article 2 of the Permit signed by the Chairman of the Federal Power Commission on December 12, 1956 as reads as follows be terminated:

Line No. 4

One single phase two conductor line operating nominally at 7.2 kv, 60 cycles, located at the international border between the State of Montana (Section 2, Township 37 North, Range 36 East, Montana Principal Meridian) and the Province of Saskatchewan, Canada.

The Commission orders:

(A) Northern be and it hereby is authorized to transmit electric energy from the United States to Canada in accordance with the terms and the conditions set forth in the application and subject to the provisions of this order.

(B) The electric energy which Northern is hereby authorized to transmit from the United States to Canada shall be in the respective maximum annual amounts and at the respective maximum transmission rates for each of the three lines, all as described above; such energy to be transmitted over the facilities specified in the Permit signed by the Chairman of the Federal Power Commission on December 12, 1956, and accepted by Northern on December 27, 1956 as modified pursuant to this order.

(C) The authorization herein granted may be modified from time to time or terminated by further order of the Commission, but in no event shall such authorization extend beyond the date of termination or expiration of the Permit signed by the Chairman of the Federal Power Commission, referred to in Paragraph (B) above.

(D) Northern shall conduct all operations pursuant to the authorization herein granted in accordance with the provisions of the Federal Power Act and pertinent rules and regulations or orders issued by the Commission.

(E) Northern shall maintain adequate metering equipment to measure the flow of all energy transmitted from the United States to Canada over each of the aforedescribed three lines, pursuant to the authority herein granted; shall make, keep and preserve full and complete records with respect to the movement of such energy; and shall furnish in triplicate with respect to such transmission of electric energy, reports annually, on or before February 15, showing (with respect to each of the aforedescribed three lines), the total kilowatt-hours delivered, the maximum kilowatts of transmission and the consideration received therefor during each month of the preceding year.

(F) This authorization to transmit electric energy from the United States shall not be transferable or assignable, but in the event of the involuntary transfer of facilities, used for such transmission by operation of law (including such transfers to receivers, trustees or purchasers under foreclosure or judicial sale),

shall continue in effect temporarily for a reasonable time thereafter, pending the making of an application for permanent authorization and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the physical facts relating to sufficiency of supply, rates, and nature of use remain substantially the same as before the transfer.

(G) This authorization shall be without prejudice to the authority of any State or State regulatory commission for the exercise of any lawful authority vested in the State or State regulatory commission over Northern.

(H) This authorization is without prejudice to the authority of this Commission, or any other regulatory body, with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission, or other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

(I) The authority of Northern Electric Cooperative to construct and maintain at the international border facilities, referred to as "Line No. 4", described in Article 2 of the Permit, as is referred to in Paragraph (2) above, be and it hereby is revoked.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, EKLUTNA PROJECT, ALASKA, DOCKET NO. E–7045

ORDER EXTENDING CONFIRMATION AND APPROVAL OF RATE SCHEDULES

(Issued April 17, 1963)

The Acting Commissioner of the Bureau of Reclamation, United States Department of the Interior (Reclamation) on July 18, 1962, pursuant to the Act of Congress of July 31, 1950 (64 Stat. 382), as amended, filed with the Federal Power Commission a request for the extension of confirmation and approval heretofore granted by the Commission's order issued August 1, 1957 (Docket Nos. E–6544, E–6599, and E–6648, 18 FPC 97), of rate schedules A–F2, A–N2, A–L2 which terminated August 4, 1962, for the sale of electric power and energy generated at the Eklutna Project (Eklutna), located in the vicinity of Anchorage, Alaska.

Along with the filing of its request, Interior has submitted a repayment study that shows that the proposed rates will provide sufficient revenue to repay the total investment allocated to power in the forty-first year of operation or 1996. It is estimated, according to the study, such total investment will reach a maximum of $30,982,371 in fiscal year 1964.

Written notice of the request for extension of approval of the three rate schedules was sent to state officials and other interested parties. Notice of the request was also published in the Federal Register on August 10, 1962 (27 F.R. 8001), stating that any person desiring to make comments or suggestions for Commission consideration with respect to said Rate Schedules should submit the same in writing on or before August 23, 1962.

Comments were received from the Chugach Electric Association and the City of Anchorage, Alaska. These comments go to the form of the rates as well as the level. The views of Reclamation in regard to the points raised by these two customers were requested by letter, and were received October 8, 1962. In a subsequent letter of March 4, 1963 replying to the Commission's

letter of November 9, 1963 requesting information indicating the basis for the use of a 41 year amortization period, the Assistant Secretary of the Interior requested temporary extension only of the existing schedules until August 4, 1964 pending receipt of the recommendations of the President's Water Resource Policy Committee now engaged in studying cost allocations and repayment practices of Federal hydroelectric projects at which time it is anticipated rate schedules can be formulated with greater assurance of stability in accordance with uniform policies.

The Commission finds:

It is appropriate for the purposes of the Eklutna Project Act of July 31, 1950 (64 Stat. 382) as amended, that the confirmation and approval of Rate Schedules A–F2, A–N2, and A–L2, filed by Reclamation, for the sale of electric power from the Eklutna Project heretofore granted be extended and continued from the date of issuance of this order to August 4, 1964, as hereinafter provided.

The Commission orders:

The confirmation and approval of Rate Schedule A–F2, A–N2, and A–L2 of Reclamation for the sale of electric power from the Eklutna Project are hereby extended and continued for an interim period beginning with the date of this order and ending August 4, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UTAH POWER & LIGHT COMPANY AND CALIFORNIA-PACIFIC UTILITIES COMPANY, DOCKET NO. E–7079

ORDER AUTHORIZING SALE, ACQUISITION AND MERGER OR CONSOLIDATION OF FACILITIES

(Issued April 17, 1963)

Utah Power & Light Company (UP&L), incorporated under the laws of the State of Maine and doing business in the States of Utah, Idaho, and Wyoming, with its principal business office at Salt Lake City, Utah, and California-Pacific Utilities Company (Cal-Pac), incorporated under the laws of the State of California and qualified to transact business in the States of Oregon, Idaho, Utah, Nevada, Wyoming and Arizona, with its principal business office at San Francisco, California, filed a joint application on January 21, 1963, requesting authorization pursuant to Section 203 of the Federal Power Act, for UP&L to acquire certain existing electrical facilities and assets of Cal-Pac located in Oneida County, Idaho and in Lincoln County, Wyoming and authorization for the sale by Cal-Pac of such facilities to UP&L.

UP&L is an operating utility and also a holding company under the Public Utility Holding Company Act of 1935. It is engaged principally in the business of generating, transmitting, distributing and selling electric energy in a territory which comprises southeastern Idaho, northern, central and southeastern Utah and western Wyoming. The Company's remaining subsidiary is Western Colorado Power Company. Another former subsidiary, Telluride Power Company, was merged into UP&L by Commission order issued January 21, 1963 (Docket No. E–7034), 29 FPC 128.

Its territory comprises an area of approximately 32,000 square miles extending south from Ashton, Idaho, southward and southeastward to the eastern and southern borders of Utah. The north and south limits of the service area are approximately 300 miles apart. Utah Power supplies electric service at retail to over 400 communities and adjacent rural areas.

Cal-Pac, is an operating utility engaged in the electric, gas, water and telephone business in various parts of California, Oregon, Nevada, Utah, Idaho, Wyoming and Arizona.

Cal-Pac's electric utility operations are conducted in 12 widely separated systems serving about 29,600 customers. The Cokeville system in Wyoming has approximately 280 customers and is one of the three systems which generates an appreciable part of its energy requirements. The Malad City system in Idaho has approximately 1,520 customers. Both systems in the proposed transaction have a small hydroelectric plant which generates a part of the system's energy requirements.[1] The remainder of the energy requirements are obtained from UP&L with which each system is interconnected. UP&L in 1961 supplied 94 percent of the energy requirements of the Malad City system and 65 percent of the energy requirements of the Cokeville system. The requirements of the two systems are very small in comparison with the resources of UP&L.

UP&L and Cal-Pac are not affiliated.

By two letter agreements, dated November 1, 1962, UP&L has agreed to purchase and Cal-Pac has agreed to sell:

(1) All of Cal-Pac's Cokeville electric facilities in Lincoln County, Wyoming.

(2) All of Cal-Pac's Malad electric facilities in Oneida County, Idaho.

The purchase price includes all property of every description in the designated areas excluding cash on hand, accounts receivable and guaranteed customer deposits and certain outdoor signs.

Under the terms of the agreement, UP&L proposes to pay Cal-Pac $197,000 in cash for the Cokeville system in Lincoln County, Wyoming, and $463,000 in cash for the Malad system in Oneida County, Idaho. These two amounts are subject to adjustments for retirements, additions, and betterments made after May 31, 1962. In addition, UP&L has agreed to pay Cal-Pac the cost of all materials and supplies on hand, usable in the construction, operation and maintenance of the systems. Cal-Pac proposes to assign its customer deposits and accounts receivable to UP&L for cash to be determined as follows: Guaranteed customer's deposits shall be deducted from the net amount of accounts receivable and UP&L will pay an amount equivalent to the balance less one percent to cover the cost of collection. UP&L will assume responsibility for such deposits and for refundable construction advances.

UP&L, as of September 30, 1962, would have acquired the following assets and would have assumed the following liabilities:

	Cokeville system Wyoming	Malad system Idaho
ASSETS		
Total electric plant less provision for depreciation	$207,916	$492,116
Accounts receivable	3,030	18,369
Materials and supplies	3,680	9,431
Total assets	214,626	519,916
LIABILITIES		
Customers' deposits	344	1,324
Customers' advances for construction	1,505	2,825
Contributions in aid in construction	1,828	26,647
Total liabilities	3,677	30,796
Net assets	210,949	489,120

[1] In a separate order issued concurrently herewith, California-Pacific Utilities Company and Utah Power & Light Company, Project Nos. 749 and 1740, the transfer of the licenses for the Cokeville and Malad projects from Cal-Pac to UP&L is approved.

UP&L's consideration as of September 30, 1962 would have been the same as net assets acquired, i.e., $210,949 for the Cokeville system and $489,120 for the Malad system. Therefore, UP&L's two acquisitions from Cal-Pac will not result in the creation of an acquisition adjustment on the books of UP&L and will not result in a gain or loss on the books of Cal-Pac.

The two systems of Cal-Pac which Utah Power proposes to acquire are located approximately 150 miles from each other and even greater distances from the 10 other scattered Cal-Pac electric systems. Both systems are interconnected with UP&L; the Malad City system is practically surrounded by UP&L facilities and UP&L facilities are adjacent to the Cokeville system on three sides.

UP&L proposes to continue the operation of the two systems as integral parts of its extensive interconnected system. It would appear that operating economies in such functions as engineering, construction and customer accounting and billing, not practical in the scattered Cal-Pac systems, will result from the integrated operations. Availability of UP&L's larger service resources in the area should provide more efficient service and restoration of service in times of emergency. System improvements and extensions in the areas should be possible without encroaching on each other's service areas.

At present, the retail rates of Cal-Pac in Idaho and Wyoming are approximately ten percent higher than UP&L's retail rates in nearby communities. According to the application, rates for service in the area will be adjusted to the published and approved rates of UP&L and will result in a general decrease in cost of service to the consumer. UP&L was recently granted a 7.1 percent rate increase in the State of Utah by the State Commission. Similar increases, if applied for and granted in Idaho and Wyoming would reduce but not wipe out the differential in existing rates. Thus, it appears that the retail consumers will obtain, in addition to improved service, some benefit from the proposed transaction in the form of rate reductions.

Written notice of the application has been given to the Idaho Public Utilities Commission, the Public Service Commission of Wyoming and the Governors of those states. Notice of the application was also published in the Federal Register on January 31, 1963 (28 F.R. 927), stating that any person desiring to be heard or to make any protest with reference to said application should on or before the 15th day of February, 1963, file with the Federal Power Commission, Washington 25, D.C., petitions or protests in accordance with the requirements of the Commission's Rule of Practice and Procedure. No petition or protest or request to be heard in opposition to the granting of the application has been received.

By order of February 27, 1963, the Idaho Public Utilities Commission, and by order of March 18, 1963, the Public Service Commission of Wyoming approved the request of UP&L to acquire the respective facilities of Cal-Pac located in Idaho and Wyoming and approved Cal-Pac's request to dispose of the facilities to UP&L.

UP&L is a holding company registered under the Public Utility Holding Company Act of 1935. Inasmuch as the acquisition of facilities proposed herein is subject to the approval of State Commissions such acquisition is exempted from the provisions of the aforesaid act by virtue of Section 9(b)1 thereof.

The Commission finds:

(1) Applicants, Utah Power & Light Company and California-Pacific Utilities Company, corporations, are public utilities within the meaning of Sections 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued January 21, 1963, Utah Power & Light Company (Docket No. E–7034) for UP&L and June 18, 1958,

Southern Utah Power Company, California-Pacific Utilities Company (Docket No. E–6808), 19 FPC 951 for Cal-Pac.

(2) By the proposed transaction, as described above, UP&L will acquire and merge or consolidate with its facilities, subject to the jurisdiction of the Commission all of the Cokeville and Malad electrical facilities of Cal-Pac located in Lincoln County, Wyoming and Oneida County, Idaho, respectively, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act, and Cal-Pac will dispose of such facilities to UP&L, within the meaning and subject to the requirements of Section 203 of the Act.

(3) The proposed acquisition of said facilities of Cal-Pac by UP&L, and the proposed disposal of such facilities by Cal-Pac as described above, upon the terms and conditions specified in the application and subject to the provisions of this order will be consistent with the public interest, as expressed in Section 203 of the Act, for the reasons set forth in the recital above.

The Commission orders:

(A) The proposed acquisition and merger or consolidation of such facilities of the California-Pacific Utilities Company by the Utah Power & Light Company and the proposed disposition of such facilities by Cal-Pac, all as described above, is hereby authorized and approved upon the terms and conditions set forth in the application, subject to the provisions of this order.

(B) UP&L shall record the transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body.

[LETTER-ORDER DENYING APPLICATION FOR RECONSIDERATION]

DOCKET NO. CI62–847 HUMBLE OIL & REFINING CO.

APRIL 18, 1963

HUMBLE OIL & REFINING CO.
P.O. BOX 2180,
Houston 1, Tex.

Attention: Messrs. Albert C. McClain and Jesse H. Foster

GENTLEMEN: This is with reference to your "Application for Reconsideration of Rejected Supplement to Rate Schedule, etc." filed March 15, 1963. This application refers to an amendatory agreement dated June 14, 1962, which was filed January 30, 1963 as a supplement to your FPC Gas Rate Schedule No. 302 and was rejected by our letter dated February 13, 1963, 29 FPC 413.

The afore-mentioned amendatory agreement was rejected because it incorporated either therein or by reference to basic contract of August 7, 1952, pricing provisions other than those permitted by Section 154.93 of the Commission's Regulations. Section 154.93 of the Commission's Regulations under the Natural Gas Act was adopted by the Commission after its Rulemaking Proceeding held in R–203. We had received comments on the substance of the regulation. Due consideration was given to such comments including the

"Views and Comments of Humble Oil & Refining Company", and thereafter the Commission adopted the regulation. We are not inclined at this juncture to reconsider the wisdom of the regulation, nor do we deem it expedient to postpone the effectiveness thereof.

Therefore, the reasons advanced in your application constitute insufficient cause for reconsideration of action in rejecting the amendatory agreement in question or for waiver of Section 154.93 of the Commission's Regulations. Accordingly, your request for reconsideration or waiver is hereby denied. The rejection of amendatory agreement in question is without prejudice to the resubmittal of an original and two copies thereof which do not contain the unacceptable pricing provisions.

By direction of the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

NORTHERN UTILITIES, INC., DOCKET NO. RP63-10

ORDER SUSPENDING PROPOSED REVISED TARIFF SHEET, PROVIDING FOR HEARING AND FIXING DATE FOR PRE-HEARING CONFERENCE

(Issued April 18, 1963)

On February 18, 1963, Northern Utilities, Inc. (Northern-Inc.) tendered for filing under the provisions of Section 4 of the Natural Gas Act, First Revised Sheet No. 8 to its FPC Gas Tariff, Original Volume No. 1, proposing an increase in rate and charge to Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska) which when applied to the volume of gas involved would amount to an increase of approximately $225,000 annually, or 115% over the presently effective rate. Northern-Inc. originally requested an effective date of March 21, 1963, but by subsequent letter to the Secretary, dated March 11, 1963, amended the requested effective date for the proposed increased rate to April 22, 1963.

Northern-Inc. is the recently organized successor in interest to Northern Utilities Company.[1] Northern-Inc. alleges that it makes no sales for resale in interstate commerce, but among other things, transports gas in the state of Wyoming for the account of Kansas-Nebraska which transports gas for resale in the states of Kansas, Nebraska and Wyoming. Among Northern-Inc.'s properties related to this proceeding are two parallel transmission lines extending approximately 100 miles from near the Sand Draw Field, Fremont County, Wyoming to a point near Casper, Natrona County, Wyoming. One of these is used for transporting gas for the account of Kansas-Nebraska and is also used in supplying gas to other customers because its capacity exceeds the requirements of Kansas-Nebraska.

In support of the proposed increased rate, Northern-Inc states that its presently effective rate for service to Kansas-Nebraska, averaging approximately 3.25¢ per Mcf, is the same as that charged by its predecessor, North Central Gas Company, since January 1, 1941; that said rate does not permit its recovery of

[1] See Commission order issued December 20, 1962, in Docket Nos. CP63-74, CP63-76 and CP63-104 entitled, "Findings and Order Issuing Certificates of Public Convenience and Necessity and Permitting and Approving Abandonment of Facilities and Service," 28 FPC 1082, for description of acquisitions and distributions of properties related to the service for which the increased rate and charge herein is proposed.

cost of service, including a fair rate of return; that in the certificate proceeding referred to above in Docket No. CP63–74, Northern-Inc reserved the right to file an application for an increase to 7¢ per Mcf; that in tendering the proposed increased rate, compliance with the detailed information required by Section 154.63 of the Commission's regulations is not in the public interest and that the filing of a complete system-wide study should be waived.

The increased rate and charge contained in the above-designated revised tariff sheet tendered by Northern-Inc on February 18, 1963, presents, among other problems, the issues of cost allocation, of proper rate base and the manner in which the system is operated. Consequently, the increased rate and charge may be unjust, unreasonable, unduly discriminatory and preferential.

The Commission finds:

(1) It is necessary and proper in the public interest, and to aid in the enforcement of the provisions of the Natural Gas Act, that the Commission enter upon a hearing concerning the lawfulness of the proposed change in rates, charges, classifications, and services, and that the above-identified tariff sheet be suspended and the use thereof deferred as hereinafter ordered.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the Natural Gas Act that the public hearing herein be expedited.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure and the Regulations under the Natural Gas Act (18 CFR, Chapter I), a public hearing be held in accordance with Commission Order No. 257 [18 CFR Sect. 2.59] upon a date to be fixed as hereinafter provided, concerning the lawfulness of the proposed rates, charges, classifications, and services contained in the above-identified tariff sheet.

(B) Pending such hearing and decision thereon, Northern-Inc's First Revised Sheet No. 8 to its FPC Gas Tariff, Original Volume No. 1 is hereby suspended and the use thereof deferred until August 22, 1963, and until such further time as it may be made effective in the manner prescribed by the Natural Gas Act.

(C) At the hearing herein, the respondent, Northern-Inc shall have the obligation of going forward first with the presentation of its direct case-in-chief, and shall serve its prepared testimony and exhibits upon all parties on or before May 18, 1963.

(D) The Commission staff and all other parties to this proceeding proposing to present evidence herein, shall serve the prepared testimony and exhibits of their direct cases on all parties on or before June 13, 1963.

(E) Presiding Examiner Francis L. Hall, or any other officer or officers of the Commission designated by the Chief Examiner for that purpose (see delegating of authority, 27 F.R. 4276, etc.) shall issue notice of the date of hearing; decide other relevant procedural matters not herein prescribed; preside at the pre-hearing conferences and at the hearing in this matter, pursuant to the Commission's Rules of Practice and Procedure, and as further provided by this order.

(F) Without limitation upon the authority of the Presiding Examiner to convene pre-hearing conferences prior to, or subsequent to the date herein fixed, pursuant to the provisions of Section 1.18 of the Commission's Rules of Practice and Procedure, a pre-hearing conference before the Presiding Examiner shall commence at 10:00 a.m. (EDST) on June 20, 1963, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., for the purpose of effectuating the intent of the Commission as hereinabove set out in this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

LICENSE APPLICATIONS—REVISION OF REGULATIONS, DOCKET NO. R-223

ORDER NO. 260-A

AMENDING SECTION 4.41 OF REGULATIONS UNDER THE FEDERAL POWER ACT

(Issued April 18, 1963)[1]

We are concerned here with an amendment to § 4.41 of the Regulations under the Federal Power Act which was proposed, among others, in the original notice issued herein on October 16, 1962. We noted in Order No. 260 that we were not taking any action on this proposal at that time.

The specific amendment herein considered would amend § 4.41 of Part 4 of the Commission's Regulations under the Federal Power Act (18 CFR 4.41) to require the filing of a new Exhibit R as a part of each application for license, the same being a plan for the public use of project lands and waters for recreational purposes. General public notice of the proposed rulemaking, including the amendment here under consideration, was given by publication in the Federal Register on October 19, 1962 (27 F.R. 10262). Pursuant to a request therefor, the Commission on December 6, 1962, issued a notice extending the time to and including February 1, 1963 for the submission of written comments and views respecting the proposed amendment (27 F.R. 12378).

The Department of the Interior and the Department of Agriculture endorsed the proposed amendment of § 4.41 to require the filing of an Exhibit R as part of an application for license. Each recommended minor revisions which we have adopted to the extent we believe desirable.

Concern was expressed by certain licensees under the Act that preparation of a recreational use plan (Exhibit R), in the manner proposed, would be difficult, if not impossible, prior to the filing of an application for license and, at the least, would cause unreasonable delay in the filing of an application; that the cost of such recreational facilities might have an adverse effect on the economics of a proposed hydroelectric project unless such costs were related to the economics of the project; that the recreational plan should not apply to a constructed project or where no significant recreational potential exists; that the proposed amendment should specifically provide that recreational uses should not be inconsistent with the primary purposes for which the project is to be constructed; that such a plan should be required to be filed only after issuance of a license and after consultation with specified agencies; and that such a plan is unnecessary in view of the provisions of Article 7 of the "Terms and Conditions" usually made a part of major licenses for such projects (Form L-4, 16 FPC 1284, 1286, and Form L-6, 16 FPC 1121, 1123).

The comments of several of the licensees have assumed that agreements with Federal, State, and local agencies having an interest in recreation must be obtained prior to filing an application for license. While this may be desirable, it is not required by Exhibit R. The plan required by Exhibit R is the best plan that an applicant feels it can propose, consistent with the recreation potential and primary purpose and economics of the project, after consultation with such agencies. The cost of the recreational facilities which applicant proposes to construct should be included in Exhibit N of the application. We

[1] Published in the Federal Register on April 25, 1963 (28 F.R. 4092).

have adopted certain language changes in the proposed regulation to clarify this purpose.

It is the Commission's intent, whenever practical and in the public interest, to condition the issuance of future licenses upon acceptance of the plan for recreational use specified therein by the Commission. The filing of a proposed recreational use plan by applicant as part of its original application should assist in expediting comments on the possible recreational use of the project lands and waters and, therefore, the processing of the application for license. It would be anomalous to exempt applicants for constructed projects operating without a license from this requirement, as was suggested by certain of the comments.

Upon consideration of the entire record in this proceeding, *the Commission finds:*

The amendment hereinafter adopted is necessary and appropriate in order to carry out the provisions of the Federal Power Act.

Acting pursuant to the authority granted by the Federal Power Act, particularly sections 9, 10(a), 10(i), and 309 thereof (41 Stat. 1068, 49 Stat. 842, 858, 16 U.S.C. 802, 803, 825h), *the Commission orders:*

(A) In Part 4 of Subchapter B, Regulations under the Federal Power Act, Chapter I of Title 18, Code of Federal Regulations, § 4.41 Required exhibits, is amended by adding, after *Exhibit O*, the following:

Exhibit P. (Not required under this section)

Exhibit Q. (Not required under this section)

Exhibit R. A proposed plan for full public utilization of project waters and adjacent project lands for recreational purposes so far as consistent with proper operation of the project for the development of water power and other public purposes. For projects where lands of the United States will be affected, the proposed plan shall be prepared after consultation with the agency having supervision over those lands. On other lands, the plan shall be prepared after consultation with appropriate State and local agencies. The plan shall show the location of the project lands and waters proposed by the applicant for camping, picnicking, bathing, boating, fishing, hunting and similar recreational activities. It shall include provisions for sanitary facilities, boat-launching ramps and access roads and trails. The applicant shall indicate the facilities it proposes to provide at its own cost consistent with the economics of the project and the potential recreational opportunities.

[Secs. 9, 10(a), 10(i), and 309, 41 Stat. 1068, 49 Stat. 842, 858, 16 U.S.C. 802, 803, 825h]

(B) The amendment prescribed herein is effective on and after June 1, 1963.

(C) The Secretary shall require prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SAM HOUSTON PUBLIC UTILITY DISTRICT, ERIN, TENNESSEE, DOCKET NO. CP62-182; HARDEMAN-FAYETTE UTILITY DISTRICT, MOSCOW, TENNESSEE, DOCKET NO. CP62-183

ORDER GRANTING MOTION TO AMEND ORDER

(Issued April 19, 1963)

On March 25, 1963, Sam Houston Public Utility District, Erin, Tennessee, and Hardeman-Fayette Utility District (Districts) filed motions requesting the Com-

mission to amend its order of November 19, 1962, in Docket Nos. CP62–182 and CP62–183, 28 FPC 831, wherein we directed Tennessee Gas Transmission Company to provide natural gas service to the Districts. Ordering Paragraph (D) provided that the order was conditioned upon Tennessee receiving permanent certificate authorization in Docket No. CP60–94. The motions by the Districts request that Ordering Paragraph (D) be omitted.

In its amended answer to the original application of the Districts, Tennessee stated that having received temporary authorization for a portion of its expansion program proposed in Docket No. CP60–94, it did not oppose the issuance of an order directing it to serve the applicants. It appears that it will not impair Tennessee's ability to render service to its existing customers to grant the motions of the Districts and good cause has been shown for granting the motions.

The Commission orders:

(A) The order issued November 19, 1962, in the above proceedings is hereby amended to delete Ordering Paragraph (D).

(B) In all other respects, the order issued November 19, 1962, in the above proceedings shall remain unchanged.

OPINION NO. 379–A

SOUTHERN NATURAL GAS COMPANY, DOCKET NOS. G–20509 AND RP60–15

(Issued April 19, 1963)

Syllabus

1. There is no record justification for the modification of Southern's rate urged by Atlanta Gas, since no issue with respect thereto was raised at the hearing. P. 781.
2. Commission *rejects* contention that rates prescribed contravene proviso of Section 5(a); *holds* "rate" referred to by proviso includes all various components of the rate and there would be no prohibited increase where, as here, net impact of rate is not such as to increase total revenues to be collected thereunder. P. 782.
3. Commission *modifies* opinion No. 379, with respect to flow-through of refunds and *denies applications for rehearing.* Pp. 783–784.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

Ross, *Commissioner:*

On February 18, 1963, the Commission issued Opinion No. 379, 29 FPC 323, in the above-named proceedings, determining just and reasonable rates for Southern Natural Gas Company (Southern). Applications for rehearing have been timely filed by Southern, Georgia Public Service Commission (Georgia PSC), Atlanta Gas Light Company (Atlanta Gas), South Atlantic Gas Company (South Atlantic), Georgia Textile Manufacturers Association, Inc. and Georgia Industrial Gas Users Association (Georgia Industries), and Alabama Gas Corporation (Alabama Gas). Southern's application has already been disposed of by the Commission's order of March 7, 1963, 29 FPC 433, denying the application for rehearing and granting motion for stay and for leave to file substitute rates. The remaining applications are before us for disposition at this time.

The Georgia PSC, Atlanta Gas, and South Atlantic, all Zone 3 interveners, contend that the Commission erred in using as a test year the twelve months

ending June 30, 1959, as adjusted, rather than the later test year urged by the Georgia PSC. These applicants also contend that we erred in allocating Southern's costs between jurisdictional and nonjurisdictional customers on the basis of Mcf-miles rather than on the basis of Southern's historical cost pattern or on a straight volumetric basis, and in allocating jurisdictional costs between Southern's three zones on the basis of Mcf-miles as modified by historical factors rather than on the historical pattern alone. Use of the test year and the allocation methods urged by these applicants would have the effect of reducing Southern's costs in Zone 3, and the Zone 3 rates as determined in Opinion No. 379.

The test year question has been considered at great length. As described in our opinion, it has been raised time and again throughout these proceedings, and has been the subject of numerous rulings by the examiner and the Commission. The applications now filed throw no new light on this issue. The matter is thoroughly covered in the opinion, and we find no need to further amplify the discussion here.

Similarly, the applicants have presented no new facts or fresh arguments on the allocation question. Our opinion makes it abundantly clear that we are fully cognizant of the problem presented on Southern's system by the competition of low-cost coal for industrial use. We are also aware that it is not only a problem in Zone 3. Naturally, Southern's distributor customers who face this competition want the lowest possible rates, and would gladly have their rates reduced at the expense of customers in another zone. The nature of Southern's system and its methods of operation, however, do not justify or require application of the allocation methods which these interveners urge upon us. We would note that all four allocation witnesses utilized Mcf-miles in allocating costs between jurisdictional and nonjurisdictional customers, and that all but Southern's witness, who used the historical method, used the Mcf-mile method or some modification thereof in allocating jurisdictional costs between zones. South Atlantic cites the Commission's handling of allocation and rate design in two El Paso Natural Gas Company cases[1] as a precedent for the present case; however, the special circumstances which were there found to be controlling are not applicable to Southern's operations. In our judgment distance is the compelling factor to be considered in the allocation of transmission costs on Southern's system; and, to the extent that there are other factors bearing on the allocation problem, we feel that sufficient consideration has been given them by the 50–50 weighting of Mcf-miles and historical revenues in our allocation of costs between Southern's zones.

The Georgia PSC also contends in its application for rehearing that the Commission erred in not adjusting the Docket No. RP60–15 rates, as determined in Opinion No. 379, to reflect the settlement of United Gas Pipe Line Company's rates in Docket No. RP60–2, and in not ordering refunds to reflect the settlement for the period commencing June 15, 1961. Since filing its application, however, the Georgia PSC has wired the Commission requesting that this contention be stricken from its application as a ground for rehearing.[2] This request is granted, and we shall give no further consideration to this contention here.

Atlanta Gas also charges error to the Commission in prescribing rates for Southern which (a) continue in effect the 90 percent ratchet provisions in Southern's rate schedules, and (b) fail to provide a greater charge than the commodity charge for authorized overrun gas. The features of Southern's

[1] *El Paso Natural Gas Co.*, 22 FPC 260 (1959); *El Paso Natural Gas Co.*, 13 FPC 421 (1954).

[2] Telegraphic communication received April 9, 1963.

rates which Atlanta Gas here objects to have been built into the company's rate structure for many years, and were incorporated in the rates filed by Southern in these proceedings. No issue with respect thereto was raised during the hearings in these proceedings. The issue was not raised until oral argument before the Commission. If Atlanta Gas wished to challenge these provisions, it should have done so at the hearings, so that the matter could be fully developed on the record. There is nothing in the record before us to justify the modification of Southern's rates which Atlanta Gas here urges.

Georgia Industries, another Zone 3 intervener, takes issue with the Commission's decision in Opinion No. 379 on a number of grounds. First, Georgia Industries attacks the Commission's adherence in Docket No. RP60–15 to the rate of return determinations in the July 8, 1960, interim order in Docket No. G–20509. It contends that the July 29, 1960, order consolidating the two proceedings and applying the interim order in Docket No. G–20509 to the proposed rates in Docket No. RP60–15, did not constitute a final determination of the interim rate of return questions in the latter docket. Accordingly, Georgia Industries proceeds to reargue the very questions considered and disposed of at length by the Commission in the July 8, 1960, interim order. However, the July 29, 1960, order on its face is a final determination for Docket No. RP60–15 of the same rate of return issues which were determined in the July 8, 1960, order for Docket No. G–20509. The two orders are couched in the same terms, make the same findings, reserve the same questions for later determination, and provide for the filing of substitute tariff sheets in the same manner and under the same conditions—all for the same reasons. The July 29, 1960 order, incorporating as it does the provisions of the July 8, 1960, order, is in all respects as final in determining the basic rate of return questions in Docket No. RP60–15, as was the latter order in determining the same questions in Docket No. G–20509.

Georgia Industries next contends that the Commisison erred in failing to reduce Southern's rate base by the amount of the accumulated deferred taxes. We do not feel that any further discussion of this issue is warranted here. The Commission has indicated its intention to adhere to the established precedent[3] pending re-examination of the question in *Alabama-Tennessee Natural Gas Co.*, Docket No. G–5471, *et al.* Should the Commission revise its policies with respect to accumulated deferred taxes as a result of that proceeding, Opinion No. 379 provides for an appropriate adjustment in Southern's rates to reflect that change.[4]

Georgia Industries also takes issue with the Commission's classification of Southern's costs in accordance with what is known as the *Atlantic Seaboard* method, and urges once more the adoption of the "Annual Capacity" method of classification and allocation advanced by its witness in these proceedings. Our Opinion No. 379 shows no rigid mechanical adherence to *Atlantic Seaboard*, nor do we believe it manifests any misconception of the "Annual Capacity" method. What it does reflect is our best judgment of how Southern's costs should be classified on the record presented to us, and the fact that we are not persuaded of the merits of Georgia Industries' "Annual Capacity" method as a basis for the classification and allocation of Southern's costs.

Georgia Industries contends that it was deprived of its rights to a fair and impartial hearing in these proceedings by reason of the Commission's

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[3] *Northern Natural Gas Co.*, 25 FPC 431 (1961).

[4] Our order of March 7, 1963, in these proceedings granted a limited stay of Opinion No. 379 with respect to the treatment of accumulated deferred taxes in the computation of Southern's rate of return.

June 7, 1962, meeting of its Natural Gas Advisory Council, during which, as announced in the agenda of that meeting, a part of the discussion was devoted to a discussion of the *Atlantic Seaboard* method of classification and allocation. There was no discussion at the meeting in question of the issues in this case or in any other case pending before the Commission. The discussion by members of the Council who represent both industry and consumer groups is a matter of public record in the published minutes of the meeting. The principles of classification and allocation in light of *Atlantic Seaboard* were considered only in general terms and on an industry basis. Our disposition of the classification and allocation questions in Opinion No. 379 rests solely on the record in these proceedings, which reflects the fact that Georgia Industries has been afforded ample opportunities to develop extensive evidence and to argue the merits of its case at length.[5]

Error is also charged by Georgia Industries in the Commission's finding that the commodity charges included by Southern in its Docket No. RP60-15 rate filing are the maximum which can be charged without loss of additional sales for interruptible industrial use. In our judgment this finding is correct. We would note, however, that the loss referred to is not the loss of any particular sales, but an overall loss of sales without any offsetting new sales. We would further note that despite the testimony with respect to the loss of certain interruptible sales due to the competition of low-cost coal, Southern did not move to adjust its rates as filed, nor has it appealed from the Commission's determination in Opinion No. 379. Certainly, Southern is well aware of the impact of these commodity charges, which have been in effect now for over two years, on the overall level of interruptible sales on its system. In any event, should the need for a reduction in the commodity levels of its rates applicable to interruptible sales become apparent, Southern may file for an adjustment as provided by the Act.

Finally, Georgia Industries contends that the rates as prescribed in Opinion No. 379 contravene the proviso of Section 5 of the Act which says that the Commission shall have no power to order any increase in any rate contained in a currently effective rate schedule, unless increased in accordance with a newly filed schedule.[6] This contention is based on the fact that the Commission has fixed a two-block commodity charge, and that both the first block charge and the average commodity charge under the two blocks are higher than the currently effective commodity charge under Southern's old rate schedules. Georgia Industries, however, misconstrues the word "rate" in the proviso relied upon, reading it as though it were synonymous with any component of a rate. The "rate" referred to by the proviso of Section 5 includes all the various components of the rate under consideration; and there would be no such increase as prohibited by this proviso where, as here, the net impact of the rate, including both the demand and commodity components, it is not such as to increase the total revenues to be collected by Southern under the rate in question. In this case we have ordered reductions in Southern's rates in all three zones, and no customer of Southern will be required to pay more for its gas under the newly prescribed rates than under Southern's heretofore effective rate schedules. *Cf. Interstate Power Co.* v. *F.P.C.*, 236 F. 2d 372 (CA8, 1956), *cert.* denied 352 U.S. 967.

There remains to be considered, the application for rehearing of Alabama Gas, a Zone 2 intervener. The contentions of this applicant go solely to the

[5] *Van Curler* v. *U.S.* 326 F. 2d 727 (CADC, 1956), *cert.* denied, 352 U.S. 935.

[6] This prohibition is contained in Section 5(a), and is incorporated into Section 4(e) by reference.

method of allocating jurisdictional costs between Southern's three rate zones. Whereas the Commission modified the Mcf-mile method of allocation by allocating transmission costs 50 percent on the basis of Mcf-miles and 50 percent on the basis of Southern's historical pattern, Alabama Gas advocates the use of the straight Mcf-mile method to allocate all of Southern's jurisdictional costs. Alabama Gas notes that the effect of the historical modification is to shift about $600,000 in costs from Zone 3 to Zone 2.

Alabama Gas argues that the two-block commodity charge as designed by the Commission makes the 50–50 modification in the allocation of transmission costs unnecessary. We do not agree. With a second block commodity charge which is in effect historically oriented, it is desirable that the first block reflect to some degree the historical pattern in order to avoid distorting the relationship between the two blocks. Both of these adjustments are an essential part of the design of Southern's rates. Moreover, the rates as so designed are distinctly more favorable to customers in Zone 2 than Southern's existing and prior rates, which were historically designed, and in fact shift costs heretofore allocated to Zone 2 from that zone into Zone 3.

Alabama Gas further argues that if the 50–50 adjustment is made in the application of the Mcf-mile method of allocation, the adjustment should apply only for a limited transition period. This period, Alabama Gas contends, should not extend beyond the period the Docket No. RP60–15 rates are in effect. We cannot know now when Southern will next file for a rate increase, or what circumstances will exist on its system at the time of such filing. There is no justification for committing ourselves at this time to any particular method of cost allocation or rate design to be used in Southern's next rate case. We shall decide that case on its merits when presented to us.

It was our intention by finding paragraph (8) and ordering paragraph (E) in Opinion No. 379 to provide for appropriate flow-through to Southern's customers of refunds received by Southern from its suppliers attributable to gas purchased by Southern during the period the rates in this case were or are in effect, with the exception of refunds received from United Gas Pipe Line Company in Docket Nos. RP61–18 and RP63–1, respecting which special conditions were imposed. Because United had already made refunds to Southern in Docket Nos. RP60–2 and G–18406, which Southern had passed along to its customers, no provision was made for the flow-through of refunds received by Southern in those dockets. However, there is a possibility of further refunds to Southern in those dockets by reason of refunds which United may receive from its suppliers. Accordingly, to provide for the flow-through of any such refunds to Southern's customers, we shall modify Opinion No. 379 by amending ordering paragraph (E) as set forth below.

The Commission finds:

(1) The applications for rehearing herein considered, set forth no new facts or principles of law which were not fully considered by the Commission when it adopted its opinion and order issued February 18, 1963, in these proceedings, or which having now been considered warrant any change or modification of said opinion and order.

(2) Ordering paragraph (E) of Opinion No. 379 should be amended by changing the first sentence to read as follows:

> Within 45 days from the receipt thereof, Southern shall refund to its jurisdictional customers the appropriate portion of any refunds applicable to the period the Docket Nos. G–20509 and RP60–15 rates were or are in effect, which it may hereafter receive from United in Docket Nos. G–18406, RP60–2,

RP61–18, and RP63–1, to the extent that such refunds reflect reduced rates in those dockets which are below the rates originally filed by United in Docket No. RP60–2.

The Commission orders:

(A) The applications for rehearing of Opinion No. 379 and accompanying order issued February 18, 1963, considered herein, are hereby denied.

(B) Ordering paragraph (E) of Opinion No. 379 is hereby amended as set forth in finding paragraph (2) above.

JAKE L. HAMON, DOCKET NO. G–16747; TENNESSEE-TEXAN OIL COMPANY, DOCKET NO. G–16867; TIDEWATER OIL COMPANY, DOCKET NO. G–16908; SUNRAY MID-CONTINENT OIL COMPANY, DOCKET NO. G–17461; TEXACO INC., DOCKET NO. G–19018

ORDER ADOPTING EXAMINER'S DECISION

(Issued April 22, 1963)*

Syllabus

1. Citing *Skelly Oil* and *Texaco Seaboard* Commission *finds* 15 cents is proper in-line price for permanently certificated sales in District No. 4. P. 785.
2. There is no basis here for ordering retroactive refunds in view of the controlling principle laid down in *Skelly*. P. 799.
3. Producers' take-or-pay contract requirements made subject to provisions of final order in R–199. P. 798; 802.
4. Commission *issues* certificates of public convenience and necessity, under Section 7 of the Natural Gas Act. P. 785; 800.

George Conger, Bernard A. Foster, Jr., Gentry Lee, Cecil C. Cammack, and *R. J. Leithead* for Cities Service Company

William Taylor La Grone for Jake L. Hamon

Head & Lyle, for Renwar Oil Corporation

Homer E. McEwen, Jr., James C. Denton, Jr., and *Dale E. Doty* for Sunray Mid-Continent Oil Company

Clyde E. Willbern, Jack Jones, and *Jack L. Brandon* for Tidewater Oil Company

Paul F. Schlicher, James J. Flood, Jr., and *Frank H. Strickler* for Texaco Inc.

J. David Mann, Jr., John E. Holtzinger, Jr., and *William W. Ross* for Philadelphia Gas Works Division of the United Gas Improvement Company

Barbara M. Suchow, Kent H. Brown, and *Martin L. Barr* for New York Public Service Commission

W. O. Crain, Vernon W. Woods, and *Huffman Lewis* for United Gas Pipe Line Company

James O'Malley, Jr., Halcyon G. Skinner, and *John A. Lodge* for Consolidated Edison Company of New York, Inc.

Edwin F. Russell and *Henry G. Hill, Jr.* for the Brooklyn Union Gas Company

W. C. Braden, Jr., L. R. Pankonien, and *Robert E. Shaw* for Tennessee-Texan Oil Company

Linward Shivers for the State of Texas

Lloyd Dietrich for the Staff of the Federal Power Commission

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*Initial decision appears on p. 785. Modified and rehearing denied by order issued June 11, 1963, 29 FPC 1152. Affirmed in part; remanded in part, in accordance with stipulation of parties to be governed by decision in *Skelly* case. See 329 F. 2d 242 (CADC–1964); cert. denied, 377 U.S. 963 (1964).

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

This proceeding involves a number of producer applications for permanent certificates to sell gas to United Gas Pipe Line in Texas Railroad District No. 4. The proposed price was 18.2304¢ and whether this was the proper in-line price was the only issue before the examiner in the proceeding. On October 15, 1962, the examiner issued his initial decision determining that the proper in-line price for these sales was 15.0¢ per Mcf.

A number of the producers and intervenors have filed exceptions to the examiner's decision. We have carefully reviewed the record in this case, the briefs before the examiner, the examiner's decision, and the exceptions thereto. We believe the examiner's decision reached the correct conclusion based upon proper reasoning and is consistent with our recent decisions involving sales in Railroad District No. 4 in *Skelly Oil Company, et al.*, Opinion No. 362, 28 FPC 401, issued August 30, 1962, and *Texaco Seaboard, et al.*, Opinion No. 383, 29 FPC 593 issued March 27, 1963. We find nothing in the exceptions which is not adequately answered in the examiner's decision or in our *Skelly* opinion, and we will therefore adopt the examiner's decision as the Commission's decision in this proceeding.

The Commission orders:

(A) The presiding examiner's decision in the above proceeding, issued October 15, 1962, is hereby adopted as the decision of the Commission.

(B) The exceptions to the examiner's decision are hereby denied.

INITIAL DECISION

UPON APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 15, 1962)

ZWERDLING, *Presiding Examiner:* This is a consolidated independent producer certificate proceeding under Section 7 (c) and (e) of the Natural Gas Act, in which the above-captioned producer applicants seek permanent certificates of public convenience and necessity authorizing sales by them of natural gas to United Gas Pipe Line Company (United). The gas is produced and sold from Corpus Christi Northwest Field, Nueces and San Patricio Counties, both of which are located in Texas Railroad Commission District No. 4 in the State of Texas, at an initial contract price of 18.2304 cents per Mcf, including 0.2304 cents per Mcf tax reimbursement.[1] All of the instant producer contracts were executed in 1958, with the exception of the Texaco contract which was executed in July 1959. Production of gas was authorized by the issuance of temporary certificates of public convenience and necessity to each of the applicants between October 24, 1958, and August 29, 1959. No conditions with respect to initial price were included in these authorizations. Initial deliveries to United commenced in July, 1959. (1 : 24 ; Cities Service reply brief, p. 21–22)

The only controverted issue in this case is that of the proper initial price to be permanently certificated, and the related question whether retroactive refunds should be required in the event a rate condition is imposed. The producer applicants request unconditional certification of the 18.2304 cent contract price. The Staff recommends that the certificates issued to the producer applicants should be conditioned to prohibit any total initial price greater than 15.24 cents per Mcf, and further recommends that retroactive refunds be required. The United Gas Improvement Company (UGI) and the Public Service Commission of the

[1] At 14.65 psia.

State of New York (PSC), intervenors, recommend that the initial contract prices be rate conditioned down to 14.6 cents per Mcf.

Hearings commenced on May 2, 1961, and, after recesses, concluded on September 28, 1961. Of the producer applicants only Cities Service Company (Cities) and Texaco Inc. (Texaco) presented documentary evidence other than their applications and gas purchase contracts.

The relevant facts with respect to the producer contracts may be briefly summarized. The Corpus Christi Northwest Field is comprised of approximately 5,000 acres which are almost entirely submerged in the waters of Corpus Christi Bay. These waters are an average of 15 feet in depth. Wet streams of gas are produced from six gas-condensate reservoirs located at the depth interval of 7,600 feet to 8,500 feet. The wet gas streams from each of the wells are delivered, by individual flow lines, to Cities' low temperature separation facility located on a built-up sand bar in the Bay. Two pipelines run from the separation facility to the shore. One, constructed by Cities, carries the condensate away from the separator. The other, constructed by the purchaser, United, is a line 3.8 miles in length and 10 inches in diameter, used to transport the rich gas stream from Cities' separator to Sunray's Red Fish Bay Gasoline Plant in the Town of Ingleside, Texas. In the gasoline plant the Btu content of the stream of gas is further reduced, by the extraction of liquifiable hydrocarbons, from 1,093 Btu's to not less than 950 Btu's and redelivered at the plant's tailgate to United for sale in interstate commerce.

Under the terms of the gas purchase contracts the initial price escalates one cent in the beginning of the 11th and 16th years of operations. In the 6th, 11th, and 16th years, the producers have the option of redetermining the price on the basis of the average of the three highest prices in District 4. Additionally, United has agreed to reimburse the producers for 1.85 percent of present State production taxes and ¾ of any new additional taxes. The contracts include annual minimum take-or-pay provisions which will be discussed at a later point. The producers are obligated to deliver dehydrated gas containing 1,000 Btu's per cubic foot, or in the event that the heating value is less, a downward Btu adjustment is to be made in the rate paid by United. United has the option of refusing gas containing less than 950 Btu's. (Staff initial brief, pp. 2–5)

I. THE CONTROLLING PRECEDENTS

The resolution of the controverted rate condition issue in this case has assumed a much simpler posture than it did at the time of the hearing, as a result of the Commission's recent controlling decisions in the *CATCO* certificate case, *Continental Oil Company, et al.*, Op. No. 351 (issued January 22, 1962), 27 FPC 96, and in the *Skelly* certificate case, *Skelly Oil Company, et al.*, Op. No. 362 (issued August 30, 1962), 28 FPC 401.

The *CATCO* case involved gas produced from the offshore Louisiana area, with an initial contract price of 21.4 cents per Mcf. After hearings held in 1957 the Commission in its original order had granted a permanent certificate at the initial contract price, without rate condition. However, the Commission order was subsequently vacated by the Court of Appeals, and a new hearing was thereafter held, concluding in January 1961. Although the area ceiling established for initial sales from the offshore Louisiana area was 19.5 cents per Mcf (Statement of General Policy No. 61–1 issued September 28, 1960, as revised by Fourth Amendment issued October 31, 1961), the Commission in its final decision in Op. No. 351 rate conditioned the CATCO contracts down to 18.5 cents per Mcf. In so doing, the Commission laid down the principle that the rate condition issue

must be determined on the basis of the "in line" price *as of the year when the contracts were executed.* The Commission stated, in this connection:

> The first question is as to the date of the "in lineness". This question should be determined as of a past date; *otherwise CATCO would be enriched because of procedural delays.* [Op. No. 351, p. 100; emphasis supplied]
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> * * * * * * *
>
> In our opinion a sale would not meet the test of public convenience and necessity of the price at the time the contract was made was not "in line" with other prices in the area. [p. 100, *idem*]
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> * * * * * * *
>
> In our opinion, if the price was out of line at the time it was first established in the contract, it is not consistent with the present or future public convenience and necessity, nor with the public convenience and necessity from the time deliveries commenced in 1958. [Order Denying Rehearing, issued March 2, 1962, p. 593 of the order, 28 FPC 592.]

The *Skelly* case involved gas produced in Texas Railroad District No. 4—*this being the identical area involved in the instant proceeding.* The producers proposed to sell the gas at various prices up to 18 cents per Mcf. After hearings were completed in April 1960, the Commission in its original order had granted permanent certificates at the initial contract prices, without rate condition. Subsequently, however, the Commission granted rehearing, and the second hearing was held from May to June 1961. At that time the Texas District No. 4 area price under Statement of General Policy No. 61–1 was 18 cents per Mcf. The producers contended, among other things, that the proposed prices should be certificated without condition because they were below the Policy Statement ceiling. The intervenors, however, contended that, as in *CATCO*, the *Skelly* proceeding involved contracts executed before the issuance of the Policy Statement and that accordingly the Commission must determine the "in line" price for the contracts at the time of their execution. The Commission stated:

> An important consideration in making our findings in this proceeding is the effect to be given our Statement of General Policy No. 61–1. * * * as the language of the Policy Statement makes clear, the area ceilings are guidelines to future Commission action. Our Policy Statement cannot effect an automatic approval of proposed rates, particularly where the contracts were entered into before the Policy Statement. [Op. No. 362, p. 407]
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> * * * * * * *
>
> Following the Supreme Court Opinion in *CATCO* we must determine the appropriate price "line" for District No. 4. This line should be determined as of the time the contracts were made * * *. [p. 408]

The Commission then held

> Based upon the evidence we conclude that the price line prior to September 28, 1960 was 15 cents per Mcf and that any price above this level is out-of-line. [p. 410]
>
> * * * * * * *
>
> Therefore with respect to all of the producer prices contained in contracts entered into prior to September 28, 1960, the date of issuance of the Commission's Statement of General Policy No. 61–1, we conclude that the "in-line" price was 15 cents per Mcf, including all reimbursements and charges, and that certification of all prices above this rate are not in the public interest and would not serve the public convenience and necessity. [p. 412]

Cities nevertheless makes an extended argument here (reply brief, pp. 3–8) to the effect that the Commission intended the principles laid down in its *CATCO*

decision to apply only to cases where *the hearing* was held *prior* to issuance of the September 28, 1960 Policy Statement; that accordingly in the instant proceeding, where the hearing was held from May to September 1961, the Policy Statement area price levels should be regarded as controlling. Cities, in making this argument, relies on certain language in the *CATCO* decision to the effect that:

> Before going further, we may note that the method used here would not be appropriate where area price levels announced by us are applicable * * *. [Op. No. 351, p. 100]

Cities' theory is that "area price levels" should be regarded as "applicable", within the meaning of the above Commission language, in all cases where the *hearing* took place *subsequent* to issuance of the September 28, 1960 Policy Statement; that accordingly the Commission intended its *CATCO* order technique to apply only to those independent producer certificate cases which were *heard prior* to issuance of the Policy Statement, without regard to the date when the contracts themselves were executed. In advancing this highly legalistic and strained theory, Cities relies upon a phrase appearing in the Commission's subsequent *Texaco-Seaboard* order of March 7, 1962, *Texaco-Seaboard Inc., et al.*, Docket No. G–13169, *et al.*, 27 FPC 482 in which the Commission referred to

> * * * the "ground rules" established by our recent CATCO opinion, for certificate cases originally heard prior to issuance of our General Policy Statement. (p. 485)

It is difficult to see how this Cities Service argument can be taken seriously. It is immediately apparent that if the theory thus advanced had any merit, it could similarly have been argued in the *CATCO* and *Skelly* cases, *supra*, that the final hearings in those cases took place *after* the Policy Statement was issued, and that accordingly the Policy Statement area price levels should have been regarded as controlling. However, as noted above, the Commission did not adopt any such position in those cases, but instead rate conditioned the producer prices down to levels below the Policy Statement area price levels, on the basis of what it determined to be the "in line" prices as of the year when the contracts were executed. Similarly, in another recent independent producer certificate case, *American Louisiana Pipe Line Co., et al.*, Docket No. CP61–24, *et al.*, 27 FPC 792, where the proposed initial prices were based on contracts executed prior to issuance of the Policy Statement, the hearing itself occurred in April and September 1961, *after* issuance of the Policy Statement. In spite of the latter fact, the Commission stated in its Order Modifying and Adopting Decision of Presiding Examiner:

> * * * we do agree that the Statement of General Policy is not in and of itself controlling in the case of initial prices proposed under pre-Policy Statement contracts at least when service had been theretofore initiated. [p. 793]

We are dealing here with a question of substance—*i.e.*, whether the initial rates in the instant contracts, executed in 1958, are consistent with the public convenience and necessity. In its *CATCO* rehearing order, as already noted above, the Commission laid down the following principle as controlling for these cases:

> In our opinion, if the price was out of line at the time it was first established in the contract, it is not consistent with the present or future public convenience and necessity, nor with the public convenience and necessity from the time deliveries commenced in 1958. [p. 593]

Obviously, it would be impossible to determine whether the instant producer prices were out of line in 1958, when the instant contracts were executed, by

reference to the Policy Statement which was not issued until September 1960, and which merely purported to reflect the "in line" prices *as of that date.* Under these circumstances, it would not make sense to say that in the case of contracts executed prior to the Policy Statement of September 1960, the question as to whether the Commisison's *CATCO* principles and techniques would be applicable should depend upon the historical accident as to whether the *hearing* itself took place *prior* to September 28, 1960—a matter controlled purely by procedural factors.

It is accordingly concluded that this Cities Service position is totally lacking in merit. There is nothing in the Natural Gas Act which requires the Commission to base its determination of the public convenience and necessity upon so meaningless a standard, and there is nothing in the cited language of the *CATCO* decision to support the theory that the Commission intended any such ridiculous result.

II. CITIES SERVICE AND TEXACO ECONOMIC AND FINANCIAL EVIDENCE

Before proceeding to a determination of the appropriate "in-line" price for the instant contracts pursuant to the principles laid down by the Commission in *CATCO* and *Skelly, supra,* reference should be made to the economic and financial evidence here presented by Cities and Texaco in support of their initial contract price of 18.2304 cents per Mcf.

In its recent *Skelly* decision *supra,* the Commission has now squarely and finally resolved the question as to the use to be made of economic and financial evidence in independent producer certificate proceedings. The Commission there held:

> * * * we do not think it necessary or appropriate in a certificate proceeding to consider evidence of area costs or financial requirements, or of individual company costs or financial requirements. [Op. No. 362, p. 411]

It will be helpful here to quote the Commission's full discussion of this problem in *Skelly,* which is equally applicable and controlling with respect to Cities' and Texaco's economic and financial evidence in the instant proceeding. The Commission stated:

> Texaco's evidence is designed to show the replacement cost of the gas which it sells. It presents industry-wide cost trends and also data on the costs of replacing gas consumed for the United States as a whole and for the Texas Gulf Coast area, using a variety of statistical sources and employing a number of estimates based on judgment. To some extent the results depend on the future demand for gas, for Texaco introduces a factor so as to include not only the cost of replacing the present gas consumed but also additional gas necessary to meet future needs. Thus under Texaco's theory the present consumer would, in effect, be burdened not only with the cost of the already-discovered gas he now consumes, plus at least some of the cost of replacing it, but also with costs associated with the discovery of additional volumes of gas based upon future demand trends. From the country-wide and area-wide data Texaco then attempts to draw similar conclusions with respect to its own financial needs by comparing its exploration and drilling costs with the industry figures.
>
> In support of its presentation Texaco quotes the *Phillips* case which states in effect that our ultimate objective will be the determination of fair prices for gas based on the reasonable financial requirements of the industry. It argues that by 'reasonable financial requirements' we mean the revenues required by the producing industry from sales of natural gas in

order to provide funds sufficient to search for, develop and produce gas supplies adequate to meet the continuing demands of the public for gas. In our opinion these observations and Texaco's evidence are not germane to this certificate proceeding. The principle criterion that should be employed here is whether the proposed prices were "in line" at the time of contract execution as required by the Supreme Court's *CATCO* opinion. Texaco's observations and evidence may have an important bearing on determinations to be reached in an area rate proceeding, or might be relevant in an individual company rate case although they fall short of showing Texaco's costs. However, we do not think it necessary or appropriate in a certificate proceeding to consider evidence of area costs or financial requirements, or of individual company costs or financial requirements. Any such approach is of limited utility and leads to complicated, long-drawn-out proceedings, detrimental to the public.

Questions concerning the cost of replacing present reserves, and more particularly whether such costs should be borne by present customers or by venture capital are not questions to be decided in a section 7 certificate proceeding. Rather, they are central questions to be decided in area rate proceedings.

We therefore hold that cost of service and financial requirements evidence normally is not relevant in producer certificate cases and that the initial price in such proceedings shall be determined by the "in line" price in the area at the time the producer contract in issue was executed and by our guideline ceiling price for the area. We do not mean to foreclose the possibility that a producer may present compelling circumstances in a particular proceeding to justify a higher price, but we wish to emphasize that with the guidelines herein established the price issue in certificate cases should be handled expeditiously and that before any evidence which would customarily be presented in establishing a just and reasonable rate can be admitted in evidence, a convincing showing must be made that such evidence is essential to the just disposition of the price question.

Obviously, we cannot permit every individual certificate case to be converted into a full-blown rate case; the proof in this proceeding demonstrates the lack of utility of a limited cost of service presentation.

* * * * * * *

To correct those defects would require a complete rate case, which we have found not warranted in a certificate proceeding. [Op. No. 362, pp. 410–411]

In the light of this Commission holding, we now turn to a consideration of the specific types of economic and financial evidence presented by Cities and Texaco in the instant case.

A. *Cities Service Economic and Financial Evidence*

(1) *Supply-Cost-Profit Trends.*

This Cities' presentation consisted primarily of Exhibit 7, entitled "Supply, Cost and Profit Trends Related to Initial Price of Gas Supplies in Northwest Corpus Channel Field," sponsored by witness Schantz of Foster Associates, Inc. It includes supply, demand, revenue, profit and market trend data, described in detail at pp. 18–29 of Cities' initial brief. This Cities presentation also included a related Exhibit 6, setting forth data with respect to industry and company drilling-cost trends, which Cities characterizes as providing:

Confirmation of the justification for the contract price furnished by the supply-cost-profit trends * * * [initial brief, p. 29]

Cities' instant Exhibit 7, *supra*, is *identical in nature* with a producers' Exhibit 7, also prepared and sponsored by Foster Associates, Inc., presented in an *El Paso* certificate proceeding, *El Paso Natural Gas Co., et al.*, Docket No. CP60-72, *et al.*, entitled "Supply-Demand, Cost and Market Price Trend Related to the Question of Initial Price of Green River Bend Supplies". In Op. No. 358 (June 11, 1962), 27 FPC 1134, in the *El Paso* case, *supra*, the Commission concluded that this evidence "has no real probative value". [p. 1138] In the course of an extended analysis of this particular type of evidence, the Commission stated:

> Under the theory advanced by the producers, the economic evidence presented could be used to justify any price which might be thought to be required as an incentive to bring adequate supplies of new gas to the interstate market, and which has been negotiated at arms length in a competitive market. To accept the producers' contract price on this theory of regulation would be tantamount to an abdication of our regulatory responsibilities under the Natural Gas Act. [p. 1137]
>
> * * * * * * *
>
> The trend evidence presented by the producers in this proceeding is not sufficient to permit us to draw any conclusions therefrom with respect to the initial contract price here proposed. Without some substantial proof of how this general economic data, applicable to the industry as a whole over wide geographical areas, can be related to and utilized in support of the specific price proposed for these sales in this particular area, such evidence has no real probative value. [p. 1138]

The full discussion of the deficiencies inherent in this type of economic trend data evidence, appearing at pp. 1137-1138 of Op. No. 358, *supra*, is of course equally applicable and controlling here.

(2) *Discounted Cash Flow Study.*

This Cities presentation consisted of Exhibit 5, entitled "Economic Analysis" sponsored by witness Steeper, who described his study as a discounted cash flow study, in which the calculated discount factor was referred to as the "profitability index". (1:72, 79) Exhibit 5 shows, with respect to the Corpus Christi Northwest Field, capital expenditures, production, revenues, operating expenses, taxes and return from the year 1952 through the year 2001.

This exhibit is *identical in nature* with a discounted cash flow study presented by the producers as Exhibit 24, entitled "Economic Analysis", in the *CATCO* certificate case, *supra*. In its *CATCO* decision, Op. No. 351, the Commission rejected the discounted cash flow study in that case, stating:

> In order to show that its proposed 21.4 cents price would not yield an excessive return CATCO presented in evidence its discounted-cash-flow analysis. In this study CATCO showed, with respect to the Cameron project, investment, production, revenues, expenses, taxes and return from 1947 through 1982. The study shows, according to CATCO, that the Cameron area properties would yield a return on investment of only 10 percent if the initial price were collected throughout their life and only 11.2 percent with escalations. In our opinion this type of study, dependent heavily on speculation, does not provide a reliable support for the initial price or rate of return. Continental's witness admitted there was room for an appreciable margin for error in a study which requires estimating the rate of production, revenues and expenses for a quarter of a century in the future. [p. 106]

(3) *Traditional Cost of Service Study.*

This Cities presentation consisted of Exhibit 3, described as a "conventional-type rate-base cost of service, using actual costs, but limiting the costing unit

to the Corpus Christi Northwest Field". (Cities initial brief, p. 34) It admittedly employed methods and techniques inconsistent with those previously adopted by the Commission in *Phillips*, Op. No. 338, and *CATCO*, Op. No. 351. For example, the study was limited solely to the Corpus Christi Northwest Field.[2] In addition, it employed the straight Btu method for the allocation of joint production costs, and for the allocation of exploration and development costs betwen oil and gas. Finally, it employed a 20 percent rate of return.

Entirely apart from these specific defects, however, Cities' traditional cost of service study must be regarded as not germane to the instant certificate proceeding, in view of the Commission's express rejection of such evidence in the *Skelly* case, *supra*.

B. *Texaco Economic and Financial Evidence*

(1) Wilhelmi Exhibit 10, entitled "Study and Data on United States and Texas Gulf Coast Replacement Cost Trends and Supply and Demand". This exhibit is *identical* with Exhibit 5 presented on behalf of Texaco by the same witness in the *Skelly* case.

(2) Wilhelmi Exhibit 11, entitled "Future Gas Production Calculated at Present Finding Rates". This exhibit is *identical* with Exhibit 6 presented on behalf of Texaco by the same witness in the *Skelly* case.

(3) Vietti Exhibit 12, entitled "Data on Production Costs and Trends". This exhibit is *identical* with Exhibit 7 presented on behalf of Texaco by the same witness in *Skelly*.

In its *Skelly* decision, Op. No. 362, the Commission held that these identical Texaco exhibits, there introduced as Exhibits 5, 6, and 7 were "not germane to this certificate proceeding". [p. 411]

Under the controlling Commission precedents referred to above, it is clear that all of the Cities and Texaco economic and financial evidence presented in the instant case must be regarded as "not germane to this certificate proceeding", and should accordingly be rejected.

III. DERIVATION OF THE "IN LINE" PRICE

The Commission held in the *Skelly* case, *supra*, that the proper "in line" price for Texas Railroad District No. 4 "prior to September 28, 1960" was 15 cents per Mcf, "including all reimbursements and charges", and that "any price above this level is out-of-line". [pp. 412–413] The Commission based its "in line" determination in *Skelly* upon Staff Exhibit 24 in that case, which was identical with Staff Exhibit 13 presented in our instant proceding. Exhibit 24 in *Skelly*, and Exhibit 13 here, included the relevant data with respect to all contracts executed in Texas Railroad District No. 4 dated 1955 and later, with total initial rates of 14 cents per Mcf and higher.[3]

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[2] *See* Commission order issued February 9, 1962, in *Socony Mobil Oil Co., Inc.*, Docket No. G–13780, 27 FPC 347. This was an independent producer certificate case. The Commission in commenting on Socony's presentation of cost of service evidence relating to a *particular field*, the High Island Block 10 Field, offshore Texas, held that it was not satisfactory to attempt to determine "costs" for a separate field; that "costs should be considered only for aggregates large enough to reflect representative conditions of properties". (p. 348.)

[3] The Commission noted:

> Because proceedings related to lower priced sales were severed and certificates have already been granted for them, the study shows only contracts at prices of 14 cents per Mcf and higher. However, we may take notice that we have granted certificates for sales in District No. 4 during the three years in question at prices ranging down to 6 cents per Mcf, usually for small volumes. [p. 408.]

Because the contracts in *Skelly* were executed mainly in the years 1959 and 1960, with some in 1958, the Commission there considered and relied upon only those contracts in the exhibit which were executed during the three-year period 1958–1960. It excluded from consideration all those contracts which were "under a cloud" or suspect because their initial rate was under court or Commission review, or because they fell into approximately the same price categories as those subject to review. In addition, the Commission gave no weight to contracts which were listed in the exhibit as only temporarily certificated, with the exception of those cases where the contract had subsequently been permanently certificated at the original contract price.

In its earlier decision in the *CATCO* certificate case, *supra*, the Commission appeared to attach considerable significance to "weighted average prices." However, in its *Skelly* decision the Commission made no reference to "weighted average prices," but instead directed its attention to the numbers of contracts falling in varying price ranges. After excluding "clouded" or suspect contracts, but including temporary certificates subsequently made permanent at the original contract price, the Commission summarized the relevant price data as showing "a number of contracts involving substantial volumes of gas at the 14.0 cent and 14.5 cent price levels"; plus 4 contracts at 14.6 cents with estimated aggregate volumes of 252,350 Mcf in the first month, 3 contracts at 14.8 cents with aggregate volumes of 120,550 Mcf, and 3 contracts at 15 cents with aggregate volumes of 238,080 Mcf, plus a single contract at 15.5 cents involving a moderate volume. Based upon this evidence, the Commission concluded that "the price line prior to September 28, 1960 was 15 cents per Mcf." (p. 410)

In the instant case the producer-applicants' contracts were executed in 1958, with the exception of one small-volume Texaco contract (20,150 Mcf monthly) which was executed in July 1959. Under these circumstances, it is concluded that the "in line" price for the instant proceeding should be based upon those producer contracts executed in 1958 which were not "clouded" or suspect, including contracts temporarily certificated which subsequently were made permanent at the original contract prices. Appendix A at the end of this decision shows the relevant data with respect to such 1958 contracts, obtained from Staff's Exhibit 13. It excludes all 1958 contracts which the Commission excluded from consideration in *Skelly* as "clouded" or suspect.

On the basis of the 1958 contracts thus considered there may be derived a weighted average price of 14.4 cents per Mcf, based upon estimated first-month volumes.[4] If, on the other hand, attention is directed to the number of contracts falling in varying price ranges, following the Commission's *Skelly* technique, it appears that out of a total of 22 contracts there were two at the 16-cent price

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[4] Cities (reply brief, pp. 21–22) attacks the use of a weighted average price here on the ground that, among other things, the instant record contains no actual volume data for 1959, the year in which deliveries commenced under the instant contracts, with the result that it becomes necessary to use *estimates* of first-month volumes which were made by the sellers in their rate-schedule filings. It is concluded that this objection is without merit. In the *Skelly* case, where the Commission derived its "in line" price upon the basis of the data in Staff's Exhibit 24, the Commission included in its tabulation of such prices, under the heading "Estimated First Month Volumes", the estimated volume figures obtained from Col. (25) of Exhibit 24, which was headed "First Month's Production, From Billing Statement—Estimated". (Op. No. 362, p. 408.) These are the identical volume figures which appear in Col. (25) of our instant Exhibit 13. It should also be noted, in this connection, that no contention is made here by Cities that the use of such estimated first-month volumes necessarily produces a lower weighted average price than would have been obtained if the actual volume data for the first-month deliveries under the 1958 contracts had been available.

level, one involving a very minor volume of 8,000 Mcf monthly;[5] one minor volume contract (12,000 Mcf) at the 15-cent level; and 19 contracts at 14.613 cents and under.[6]

The Texaco reply brief (p. 7) suggests that even if the Commission's *CATCO* in-lining technique were regarded as applicable here, it would be improper to use a 1958 "in line" price for its particular contract, which was executed July 7, 1959. It is noted, however, that if a separate "in line" price were determined for the single Texaco contract, based upon 1959 contracts only,[7] a weighted average price of only 14¢ per Mcf would be derived. The "in line" price picture would also be less favorable for the instant producer-applicants if the two-year period 1958–1959 were substituted for the single year 1958. The result would then be a weighted average price of 14.3¢ per Mcf. The price spread for such a two-year period, involving a total of 47 contracts, would reflect three contracts at the 16¢ level, of which two involve minor volumes, one minor volume contract at the 15¢ level, and 43 contracts at 14.613¢ and under.

On the basis of the price evidence as outlined above, and following the in-lining method employed by the Commission in *CATCO* and *Skelly*, it is clear that a proper "in line" price for the Texas District No. 4 contracts here involved could not possibly exceed 15 cents per Mcf in any event. The only question left open is whether an even lower "in line" price of 14.6 cents, as here proposed by intervenors UGI and PSC, would be justified. It is of interest to note that these intervenors similarly contended for a 14.6-cent "in line" price on the basis of an identical argument in *Skelly*. The weighted average price for the 1958–1960 contracts used by the Commission in *Skelly* amounted to 14.35 cents per Mcf. In spite of this fact, and despite a price spread for the 1958–1960 period which included 49 contracts at 14.6 cents and lower, 3 contracts at 14.8 cents, 3 contracts at 15 cents, 1 contract at 15.5 cents, and 1 contract at 16 cents, the Commission there rejected the intervenors' position and approved an "in line" price of 15 cents per Mcf.

Under these circumstances, it is concluded that the intervenors' suggested "in line" price of 14.6 cents should not be adopted, and that a proper "in line" price for the Texas District No. 4 contracts here involved is 15 cents per Mcf.

IV. CLAIMED SPECIAL CIRCUMSTANCES

The producer applicants in their instant briefs cite various "special circumstances" relating to their contracts as justifying an additional increment above the determined "in line" price. It is to be noted, at the outset, that the Commission in *Skelly* concluded that the "in line" price for contracts entered into prior to September 28, 1960, was "15 cents per Mcf, *including all reimbursements and charges.*" [Op. No. 362, p. 412; emphasis supplied]

A. The Size of the Reserves

Cities stresses that the reserves dedicated to United in the instant producer contracts constituted the largest single undedicated reserve in the general area of which United had knowledge; that geologists currently estimate that there is

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[5] In *Skelly*, the Commission referred to a contract involving a 15,000 Mcf volume for the first-month in a minimizing way, as "a small producer sale". (Op. No. 362, p. 408, footnote 14.)

[6] The total spread in all 22 contracts was as follows: 4 contracts at 14 cents; 1 at 14.4 cents; 9 at 14.5 cents; 2 at 14.6 cents; 3 at 14.613 cents; 1 at 15 cents; and 2 at 16 cents.

[7] A technique which would be quite inconsistent with the method employed by the Commission in *Skelly*.

not less than 203 billion cubic feet of gas reserves in the Corpus Christi Northwest Field, with prospect of additions through further development, and that both size and location made this reserve attractive to United; that under the circumstances a "premium price" was justified in the instant contracts. (Cities initial brief, pp. 3 and 14; reply brief, p. 24)

The Commission has rejected a similar claim in a *Panhandle Eastern* producer certificate case, *Panhandle Eastern Pipe Line Co., et al.*, Docket No. CP60–103, *et al.* (Op. No. 350, January 15, 1962), 27 FPC 35, stating:

> Such features as the size of the reserves and the high initial availability of the gas may enhance the desirability of the Elk City gas to Panhandle; however, they are not factors which, in our judgment, should be considered in fixing Shell's price. The area price standards set forth in the Policy Statement not only contemplate the sale of gas of pipeline quality, but also the dedication with respect thereto of substantial gas reserves. [p. 45]

The first-month volumes involved in the contracts of the producer applicants in the instant proceeding are as follows:

Cities Service Company—257,000 Mcf
Sunray Mid-Continent Oil Company—99,000 Mcf
Jake L. Hamon—90,000 Mcf
Renwar Oil Corporation—45,900 Mcf
Tidewater Oil Company—23,515 Mcf
Texaco Inc.—20,150 Mcf

In the *Skelly* case, *supra*, the proposed sales included a number of contracts with first-month volumes of a much higher order—*i.e.*, one contract with a first-month volume of 1,500,000 Mcf, two contracts at 600,000 Mcf, one contract at 360,000 Mcf, one contract at 213,733 Mcf, and two contracts at 186,000 Mcf. Nevertheless, the Commission there stated:

> The record shows that while the volumes vary among the individual contracts, the proposed sales are not of such high volumes that they are not comparable to these already certificated, nonlitigated sales at 15 cents or below. [Op. No. 362, p. 410]

The "already certificated, nonlitigated sales" there referred to were the contracts listed in Staff Exhibit 24 in the *Skelly* case, which was identical with Staff Exhibit 13 in the instant proceeding.

In our instant case the already certificated and "unclouded" sales at 15 cents and below which appear in Exhibit 13 for the applicable year 1958 include such large first-month volumes as the following: one contract at 280,500 Mcf; one at 213,900 Mcf; two at 180,000 Mcf; two at 150,000 Mcf; one at 135,000 Mcf; and one at 104,625 Mcf. It is also of interest to note that the two 1958 sales at 16 cents (being the only sales in that year above the 15-cent level) involved first-month volumes of only 57,000 Mcf and 8,000 Mcf—*i.e.*, one low-moderate volume contract, and one minor volume contract.

In view of the Commission's conclusion in *Skelly* that 15 cents per Mcf was a proper "in line" price for contracts executed prior to September 1960 with the *high* first-month volumes indicated above, it seems clear that the "in line" price thus established contemplated the dedication of substantial reserves at those prices. It accordingly seems clear that the substantially more moderate first-month volumes involved in the instant producer contracts cannot be regarded as a special factor justifying a premium price in the instant proceeding.

B. *Claimed Unusual Expenditures Due to Environment of the Field*

Cities describes in detail (initial brief, pp. 5–8) certain "special problems" which were encountered by the instant producer applicants as a result of the

offshore location of the field and it suggests that the claimed "heavy exceptional costs unique to the location involved * * * justify a *premium* above any *average* price for the area." (initial brief, p. 18)[8]

It is pertinent in this connection to examine the Commission's treatment of a similar problem in the *CATCO* certificate case (Op. No. 351). The gas there involved was produced from offshore leases located 20–30 miles off the coast of Louisiana in the Gulf of Mexico—as distinguished from the instant case, where the offshore acreage lies approximately eight miles northeast of the City of Corpus Christi, Texas. (1:28) In the *CATCO* case the Commission concluded that an 18.5-cent price was "in line" for those offshore contracts, which were executed in 1956. In so holding the Commission noted that:

> * * * most of the price evidence dating from the time of the *CATCO* contracts and earlier relates necessarily to onshore sales, which differ in some degree from the sales made here from platforms in the Gulf of Mexico. Nevertheless we believe them useful in establishing the price line in this area. [Op. No. 351, p. 101]

Although the Commission noted that only one offshore price had been brought specifically to its attention [p. 102], it found no difficulty in arriving at an "in line" price on the basis of such price data relating to *onshore* sales.

In addition, the Staff properly points out (initial brief, pp. 3–4) that more than half of the additional costs cited by Cities as a result of such "unusual problems"

> are directly related to the removal of valuable hydrocarbon liquids from the condensate gas stream, a function of material benefit to the producers and at most, of only incidental value to the consumer.

In the same connection, it may also be noted (as contended by Staff) that the mere reference to the general incurrence of such "unusual expenditures", without a more specific breakdown of the "special costs" associated with the hydrocarbon liquids, as distinguished from those related to natural gas, is not sufficient in any event to justify the approval of any increment above the "in line" price level.

In addition, there is a final counterbalancing factor which should be noted here—*i.e.*, the transportation service rendered by United for the benefit of the producer applicants, of hauling the rich gas stream, without charge, from the separation facility in the Bay to Sunray's Red Fish Bay Gasoline Plant in the Town of Ingleside, Texas. In order to perform this transportation service United built a line 3.8 miles in length and 10 inches in diameter, at an installation cost of $258,000. In the gasoline plant the Btu content of the wet gas stream is further reduced by the extraction of the liquifiable hydrocarbons, which are retained by the producers, and the residue gas is then delivered to United at the tailgate of the plant. The transportation by United to the gasoline plant of that portion of the wet gas stream constituting the liquifiable hydrocarbons represents a service to the benefit and profit of the producers. This service is rendered without charge, and United witness Barnett testified that "It was part of our over-all deal when we bought the gas." (4:440)

A somewhat similar situation was involved in the *CATCO* case, *supra*. The Commission there noted (Op. No. 351) that, pursuant to arrangements with the *CATCO* companies, Tennessee carried the purchased gas, together with the condensates owned by the producers, in its own gathering lines from the offshore platforms to the shore of Louisiana. Referring to the condensates in

[8] Also see initial brief of Tennessee-Texan Oil Co., pp. 10–12.

the wet gas stream, which were thus transported by Tennessee to *CATCO's* separation station, where they were removed for the benefit of the *CATCO* producers, the Commission stated:

> Such transportation in effect is a service performed by Tennessee for Continental and the other CATCO companies, and in a cost calculation a credit should be given Tennessee for an allocated part of the transportation costs. [p. 108]

It is true that no cost calculation is being made in the instant case. However, the Commission's *CATCO* holding, *supra*, makes it clear that if any weight were to be given to the claimed "unusual expenditures" of the producers in the instant proceeding, it would be necessary at the same time to give appropriate weight on the other side of the ledger to the transportation service rendered to the producers by United in hauling the condensate portion of the wet gas stream from the separator to the gasoline plant.

C. *Claimed Justification for a Premium Price for Gathering Gas to a Central Point*

Cities stresses the fact that the instant gas is gathered by the producers and delivered to United at a central point; that accordingly the instant sales are not wellhead sales, but are the same as sales by a gatherer "and therefore more valuable to the buyer than would be equal purchases which the buyer would have to gather." (Initial brief, p. 15; reply brief, p. 25.)

Cities notes that because the gas is delivered to United at a central point, this permits a single metering by the purchaser and thus avoids the greater cost of multiple metering which is incurred where the purchaser itself does the gathering. Under these circumstances, Cities contends that the instant sales should be compared, price-wise, to sales by gathering companies, rather than sales by producers—and it contends that natural gas produced in Texas District No. 4 is sold by *gathering companies* at prices substantially higher generally than those charged for wellhead sales.

The relevant facts, already noted at an earlier point in this decision, are as follows. The instant producer applicants constructed a jointly owned separation facility on the peninsula extending into the Corpus Christi Northwest Field, and individual flow lines from all of the wells producing in this field connect to such separation facility. Through these flow lines, the full well streams are brought to the central point, at the separation facility. Construction of this flow system to that point enabled United to take delivery of the gas at the separation facility, thus offering it the benefits of a single delivery point. (1:34–36)

The controlling answer to the instant producer argument for an additional allowance for this limited gathering service is found in the Commission's recent decision in *Standard Oil Company of California, et al.*, Docket No. CI60–333, *et al.* (Op. No. 359, June 11, 1962), 27 FPC 1153. In that case the producers sold natural gas from the Red Wash Field, Uintah County, Utah, to El Paso Natural Gas Company at the tailgate of their Red Wash extraction plant. The gas was gathered, processed for the removal of liquid hydrocarbons, compressed and dehydrated by the producers, and delivered into El Paso's lateral at 900 pounds pressure. The producers contended that the applicable "in line" price previously established in the Policy Statement applied to gas at the wellhead, and that they should accordingly be granted an allowance over and above the wellhead price line for gathering, dehydration, and compression. In support of this position, they relied upon the Commission's previous approval of an additional allowance of 2.5 cents per Mcf for such services in *Panhandle Eastern*

Pipe Line Co., et al., Docket No. CP60–103, *et al.* (Op. No. 350, January 15, 1962). The Commission, however, concluded that the *Panhandle* case was plainly distinguishable, and rejected the producers' claim for such an additional allowance. The Commission noted that in the *Panhandle* case the gas involved was gas well gas and was of pipeline quality *at the wellhead;* that in the *Standard Oil* case, on the contrary, the gas sold to El Paso was casinghead gas produced from oil wells; that such gas, produced in conjunction with oil, was not of pipeline quality until it had been processed for the removal of liquids in an extraction or gasoline plant; that such gas must be gathered in order to be processed, and accordingly both the gathering and the processing were an essential step in the production of pipeline quality gas. The Commission found that the Policy Statement "in line" price was based on sales of pipeline quality gas well gas at the wellhead; that under the conditions outlined above the "in line" price, which was a price for gas of pipeline quality, was properly applicable to the gas as delivered at the tailgate of the plant; that accordingly the gathering and processing operations, which were essential to the conversion of the casinghead gas into a product of pipeline quality, were not entitled to any additional allowance. [Op. No. 359, pp. 358–359; Order Upon Applications for Rehearing, issued August 6, 1962, 28 FPC 292 at pp. 293–294.]

The relevant circumstances in the instant proceeding are identical with those involved in the *Standard Oil* case, *supra.* In the instant case wet gas streams produced from six gas-condensate reservoirs are conveyed by individual flow lines to Cities' low temperature separation facility located on a built-up sand bar in the Bay, and the dehydrated gas is then delivered to United at the outlet of the separator. The gas plainly cannot be considered to be of pipeline quality until it comes out of the separator, where it is delivered to United. The 15-cent per Mcf "in line" price fixed here (as in *Skelly*) is a price for gas of pipeline quality. Since this gas is not of pipeline quality until it comes out of the separator, the 15-cent "in line" price is properly applicable to the gas as delivered at that point, and the producers are not entitled to additional compensation for gathering the wet gas stream from the separate wells and delivering it to United at the outlet of the separator.

V. STAFF'S PROPOSED CONDITION CONCERNING "TAKE-OR-PAY" CLAUSES

The instant producer contracts contain annual minimum take-or-pay provisions under which United is currently obligated to take 10,150 MMcf each year—amounting to a 110 percent take-or-pay provision. The Staff calls attention to the pending rule-making proceeding in Docket No. R–199 in which the Commission is giving general consideration to the problem of take-or-pay provisions in producer contracts, in connection with a proposal to standardize such take-or-pay provisions at 80 percent. Under the circumstances Staff proposes that the certificates issued herein should be granted upon the express condition that the allowance of the take-or-pay provisions in the instant producer contracts is subject to the Commission's ultimate disposition with respect to such provisions in the Docket No. R–199 rule-making proceeding—and that upon the establishment, by regulation or policy statement, of a general policy governing such provisions in producer contracts, the applicants should be required within thirty days thereafter to file amended rate schedules in conformity therewith, acceptable to the Commission.

Both Cities (reply brief, pp. 35–37) and Texaco (reply brief, pp. 47–50) attack the Staff's proposed take-or-pay condition as unreasonable and illegal. The Cities and Texaco position must here by rejected, however, since the Commission

has now established a standard practice of including such conditions in producer certificate orders involving similar circumstances. In the *Standard Oil* case, Op. No. 359, *supra*, the Commission stated:

> However, as found by us in several recent cases where producers sought certificates for sales subject to 100 percent take-or-pay provisions, the public interest requires that the certificates issued herein be conditioned so as to make our allowance of the proposed take-or-pay provisions subject to our ultimate disposition with respect to such provisions in Docket No. R-199. [p. 1160] [9]

VI. RETROACTIVE REFUNDS

Staff's supplementary brief, dated February 19, 1962, recommends that the certificates to be issued in this proceeding should include a condition requiring that each of the producers refund to United a sum equal to the difference in the price charged to and collected from United and the initial price herein approved, applied to all volumes delivered to United under the instant contracts from the date of initial delivery until the effective date of this order. This Staff proposal is vigorously attacked in the Cities reply brief as unlawful.

The instant producer applicants have been operating, pending this hearing, pursuant to effective temporary certificates issued between October 24, 1958, and August 29, 1959, containing no price condition. The validity of these temporary, unconditioned certificates has not up to this time been challenged on appeal.

Under these circumstances, it must be held that there is no basis for ordering retroactive refunds, in view of the controlling principle laid down by the Commission in *Skelly*, Op. No. 362, as follows:

> Unlike the situation in *CATCO* where all of the unconditioned price certificates by which gas was dedicated to interstate commerce were either subject to timely court review because challenged and appealed or (in one case) granted pending such review, the producers here have been operating, pending this hearing on their permanent certificate application, pursuant to effective temporary certificates containing no price condition, the validity of which have never been challenged on appeal. Under these circumstances we believe that there is no basis for ordering refunds for the period, prior to the effective date of the permanent certificates being issued herewith, during which the producers were receiving the higher prices unconditionally authorized in their temporary certificates. [p. 413]

FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, the evidence adduced and the briefs filed, the Presiding Examiner finds and concludes, in addition to the findings and conclusions hereinbefore stated, that

(1) Cities Service Company,[10] Jake L. Hamon, Tennessee-Texan Oil Company, Tidewater Oil Company, Sunray Mid-Continent Oil Company, and Texaco Inc. are natural-gas companies within the meaning of the Natural Gas Act as independent producers of natural gas, as that term is defined in Section 154.91(a) of the Commission's Regulations, engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, and such sales, together

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[9] Similarly, see *Skelly*, Op. No. 362, ordering paragraph (H), p. 421; *Panhandle*, Op. No. 350, ordering paragraph (G), p. 51; *Michigan-Wisconsin Pipe Line Co., et al.*, Op. No. 353, ordering paragraph (E), p. 463.

[10] Application severed; certificate issued by order issued March 18, 1963, 29 FPC 524.

with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(2) The independent producers referred to in the above paragraph (1) are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements rules and regulations of the Commission thereunder.

(3) The sale of natural gas as proposed by the independent producers referred to in the above paragraph (1), together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity and a certificate authorizing the same should issue to each of them upon the terms and conditions of the order herein, which terms and conditions are required by the public convenience and necessity.

(4) The public convenience and necessity requires that the initial price charged by the independent producers referred to in the above paragraph (1) for the sales proposed in their certificate applications in this proceeding be not greater than 15 cents per Mcf at 14.65 psia, and that the take-or-pay requirement in their contracts be revised in accordance with the final order of the Commission to be issued in Docket No. R–199, commenced by Notice of Proposed Rule Making dated May 22, 1961.

ORDER

Wherefore, it is ordered, subject to review by the Commission on appeal, or upon its own motion as provided in the Commission's Rules of Practice and Procedure, that:

(A) A certificate of public convenience and necessity is hereby issued to each of the applicants referred to in finding (1) for the sale of natural gas in interstate commerce for resale as proposed in their applications, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, upon the terms and conditions of this order.

(B) The certificates issued to each of such producer applicants are hereby conditioned to prohibit any total initial price, including all reimbursements and charges, greater than 15 cents per Mcf at 14.65 psia from the date of issuance of this order until such prices may be lawfully changed in the manner provided by the Natural Gas Act.

(C) The certificates of such producer applicants shall be conditioned so that the take-or-pay requirement in each contract is subject to the provisions of the Commission's final order in Docket No. R–199 as of the effective date of that order.

(D) The certificates issued herein are not transferable and shall be effective only so long as each of said applicants continues the acts and operations herein authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(E) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 of the Commission's regulations under said Act requiring the filing of rate schedules for the service herein authorized and is without prejudice to any findings or orders which may have been or hereafter may be made by the Commission in any proceeding now pending or hereinafter instituted by or against the applicants. Further, the action taken in these proceedings shall not foreclose nor

prejudice any further proceeding or objection relating to the operation of any price or related provisions in the gas contracts here involved.

JOSEPH ZWERDLING,
Presiding Examiner.

APPENDIX A

CITIES SERVICE COMPANY, ET AL., DOCKET NO. G–16563, ET AL.

INITIAL PRICES AND OTHER RELEVANT DATA FOR NATURAL GAS SOLD IN TEXAS RAILROAD COMMISSION DISTRICT NO. FOUR UNDER "UNCLOUDED" CONTRACTS EXECUTED IN YEAR 1958

(1)	(2)	(3)	(4)	(5)	(6)	(7)	
						Reference Staff Exhibit No. 13	
Certificate docket number	Seller	Contract date	Initial price	Volumes (Mcf) first month's production @ 14.65 psia	Dollars (4)×(5)	Sheet	Line
G–18646	Roy H. Bettis	Oct. 1, 1958	14.0	180,000	25,200	2	13
G–18790	Harrell Drilling Co	Oct. 1, 1958	14.0	30,000	4,200	2	16
G–18821	W. L. Pickens	Oct. 1, 1958	14.0	30,000	4,200	2	19
G–18982	John W. Bee	Oct. 1, 1958	14.0	180,000	25,200	2	22
G–15159	Slick Oil Co	Apr. 17, 1958	14.4	7,500	1,080	4	40
G–15155	Getty Oil Co	Jan. 1, 1958	14.5	30,000	4,350	7	7
G–18758	W. L. Moody	Oct. 1, 1958	14.5	150,000	21,750	7	16
G–18761	Appell Petroleum Corp	Nov. 1, 1958	14.5	45,000	6,525	7	19
G–19019	Seas Oil Corp	Oct. 1, 1958	14.5	104,625	15,170	7	22
G–19182	Tennessee Gas Transmission Co	Aug. 1, 1958	14.5	280,500	40,672	7	25
G–19182	Tennessee Gas Transmission Co	Aug. 1, 1958	14.5	213,900	31,015	7	28
G–19295	Santex Oil Corp	Oct. 1, 1958	14.5	49,600	7,192	7	31
G–20384	Fred Whitaker	Oct. 15, 1958	14.5	31,000	4,495	7	37
G–16204	Cities Service Co	July 14, 1958	14.6	135,000	19,710	8	13
G–16776	Pan American Petroleum Corp	Aug. 6, 1958	14.6	31,000	4,526	8	16
G–15518	Renwar Oil Corp	Mar. 25, 1958	14.613	60,000	8,767	8	31
G–15809	Phillips Petroleum Corp	Mar. 25, 1958	14.613	20,550	3,002	8	34
G–14986	Tidewater Oil Co	Jan. 1, 1958	14.5	150,000	21,750	15	40
G–17456	Union Oil Co. of Calif	Nov. 21, 1958	14.613	62,000	9,060	16	25
G–17899	Sunray Mid-Continent Oil Corp	Dec. 1, 1958	15.0	12,000	1,800	16	34
G–18223	Delhi Taylor Oil Corp	Dec. 1, 1958	16.0	57,000	9,120	18	7
CI60–134	American Petrofina Co. of Texas	Nov. 1, 1958	16.0	8,000	1,280	18	16
	Totals			1,867,675	270,064		

Weighted average price = $270,064 ÷ 1,867,675 Mcf = 14.4¢ per Mcf.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

IDAHO POWER COMPANY, PROJECT NO. 1971

ORDER DENYING MOTION FOR CHANGE OF PLACE OF HEARING AND FIXING PREHEARING CONFERENCE

(Issued April 22, 1963)

On April 1, 1963, Idaho Power Company (Licensee) filed a motion to change the hearing fixed by Commission order issued March 22, 1963 in the above-matter, from Portland, Oregon to Boise, Idaho for the stated reason that Boise would be more convenient for the Licensee and others who may wish to intervene and participate in the proceeding.

Our order fixing hearing provides that on or before May 6, 1963 interested persons and agencies may file petitions to intervene pursuant to Section 1.8 of the Commission's Rules of Practice and Procedure. A prehearing conference immediately after that date should be helpful to the Presiding Examiner and the parties, in connection with various procedural problems, including the most appropriate place or places for the hearing. Accordingly, we will deny the motion to change the place of hearing without prejudice to a similar request being presented to the Presiding Examiner. It is our desire to have the hearing commence at the time fixed in our order issued March 22, 1963.

In view of the separate statement of Commissioner Morgan, we deem it necessary to say for the guidance of the Presiding Examiner that this order carries no implication that the hearing should be set in Boise, but rather it is the Commission's intention that the Presiding Examiner shall make his decision on the basis of the over-all public interest after hearing all parties.

The Commission orders:

(A) The aforesaid motion for change of place of hearing is denied without prejudice to its renewal before the Presiding Examiner.

(B) The interested parties and the Commission staff shall attend a prehearing conference to be conducted by the Presiding Examiner at 10:00 a.m. (EDST) on May 9, 1963 in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., to consider the matters enumerated in Section 1.18(b) of the Commission's Rules of Practice and Procedure.

Commissioner Morgan *concurring in part* and *dissenting in part* filed a separate statement.

MORGAN, Commissioner, *concurring in part and dissenting in part:*

I concur in the denial of the present motion, but I dissent from the language virtually inviting resubmission of the motion to the Examiner at the prehearing conference since in my view it conveys an improper intimation to the Examiner that a reversal of our denial will be acceptable to the Commission.

Portland, Oregon, the place originally selected for this hearing, is the appropriate place since it is centrally located for the convenience of all parties who have an interest in this matter. The people of the State of Idaho are primarily interested in the rates and services of Idaho Power Company. The people of the States of Oregon and Washington are primarily interested in the conservation of the fishery resource of the Snake River. In this latter regard, it should be borne in mind that the States of Oregon and Washington maintain large sport and commercial river fisheries as well as extensive ocean fisheries involving the entire Pacific Coast of both states, and that these fisheries are dependent in considerable degree upon the spawning grounds of the Snake River affected by Project No. 1971.

We should not forget this early in the proceeding, or at any time in the future, that the primary purpose of this hearing is to determine what has happened, what is now happening, and what will happen in the future to an irreplaceable fishery resource placed by Congress under our guardianship. To hold a public hearing amidst those people who are primarily interested in the subject of the hearing makes sense. To do otherwise does not.

I further dissent from that portion of the order which locates the pre-hearing conference in Washington, D.C. This constitutes a further intimation, in my judgment, that the Commission contemplates a change from the location of the hearing originally specified in our prior order, and is an unnecessary burden upon many of the parties who are or wish to become intervenors in this proceeding.

There is ground for the conclusion that Idaho Power Company's real reasons

for wishing the public hearing withdrawn from Portland, Oregon are other than those set forth in the motion and that the real reasons have no relation to the purported reasons set forth therein, nor are they consistent with the purpose of a *public* hearing.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MOUNTAIN FUEL SUPPLY COMPANY, DOCKET NO. CP63–127; GULF OIL CORPORATION (OPERATOR), ET AL., DOCKET NO. CI62–1515; ST. HELENS PETROLEUM CORPORATION, DOCKET NO. CI63–194; SOCONY MOBIL OIL COMPANY, INC., DOCKET NO. CI63–669; TEXACO INC., DOCKET NO. CI63–688

FINDINGS AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING RATE SCHEDULES FOR FILING

(Issued April 22, 1963)

On November 8, 1962, Mountain Fuel Supply Company (Mountain Fuel) filed in Docket No. CP63–127 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline facilities necessary to enable it to purchase natural gas from several producers in the State Line Field, Carbon and Sweetwater Counties, Wyoming, all as more fully set forth in the application in Docket No. CP63–127.

Mountain Fuel proposes to construct and operate 18 miles of 10¾-inch pipeline extending from the State Line Field to its existing 8⅝-inch pipeline in the Powder Wash Field, Moffat County, Colorado. The total cost of the proposed project is estimated to be $544,000, which cost will be financed from funds on hand and short term bank loans, as required.

On June 19, 1962, as amended on November 15, 1962, Gulf Oil Corporation (Operator), et al., (Gulf) in Docket No. CI62–1515[1], on August 10, 1962, St. Helens Petroleum Corporation (St. Helens) in Docket No. CI63–194, on November 20, 1962, Socony Mobil Oil Company, Inc., (Socony) in Docket No. CI63–669 and on November 26, 1962, Texaco Inc. (Texaco) in Docket No. CI63–688, filed applications pursuant to Section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing the above-described sales of natural gas to Mountain Fuel, all as more fully set forth in the respective applications.

Mountain Fuel entered into gas purchase agreements with Gulf, St. Helens[2] Socony and Texaco[2] dated May 31, 1962, June 20, 1962, July 12, 1962 and June 20, 1962, respectively, providing for proposed sales of natural gas at a price of 15 cents per Mcf at 15.025 psia.

Mountain Fuel states that the additional gas supply will offset the decline in deliverability from other committed reserves supplying its system and will enable it to meet the normal growth requirements of its service area.

Pursuant to due notice, a public hearing was held in Washington, D.C., on April 9, 1963, respecting the matters involved in and the issues presented by the

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[1] Gulf's application also covers the interests of Champlin Oil & Refining Co. and Union Oil Company of California in the State Line Field.

[2] Concurrently with the filing of their applications herein, St. Helens and Texaco filed their respective agreements as initial rate schedules.

applications herein. No petition to intervene or protest to the granting of the applications has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Mountain Fuel Supply Company, a Utah corporation having its principal place of business in Salt Lake City, Utah, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 15, 1940, in Docket No. G–154 (2 FPC 288).

(2) Applicants, Gulf Oil Corporation (Operator), *et al.*, St Helens Petroleum Corporation, Socony Mobil Oil Company, Inc. and Texaco Inc., are engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption subject to the jurisdiction of the Commission and each is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(3) The facilities to be constructed and operated by Mountain Fuel, as hereinbefore described and as more fully described in the application in Docket No. CP63–127, are proposed to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and construction and operation thereof by Mountain Fuel are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The sales of natural gas by Gulf, St. Helens, Socony and Texaco hereinbefore described, as more fully described in the applications in Docket Nos. CI62–1515, CI63–194, CI63–669 and CI63–688, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sales by Gulf, St. Helens, Socony and Texaco, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The sales of natural gas by Gulf, St. Helens, Socony and Texaco, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(6) The construction and operation of the facilities proposed by Mountain Fuel are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(7) Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(8) Public convenience and necessity require that the certificate issued hereinafter to Mountain Fuel and the rights granted thereunder be conditioned upon Mountain Fuel's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(9) The gas contracts, each dated June 20, 1962, between Mountain Fuel and St. Helens and Mountain Fuel and Texaco, should be accepted for filing as St. Helens Petroleum Corporation FPC Gas Rate Schedule No. 2 and Texaco Inc. FPC Gas Rates Schedule No. 307, to become effective on the date of initial delivery.

(10) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Mountain Fuel Supply Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in Docket No. CP63–127, upon the terms and conditions of this order.

(B) Certificates of public convenience and necessity be and the same are hereby issued upon the terms and conditions of this order, authorizing the sales by Gulf, St. Helens, Socony and Texaco of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary for the sales of natural gas in interstate commerce, to Mountain Fuel, as hereinbefore described and as more fully described in the applications in Docket Nos. CI62–1515, CI63–194, CI63–669 and CI63–688.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Mountain Fuel's compliance with all aplicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(D) The facilities hereby authorized in paragraph (A) above shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 1 year from the date on which this order issues.

(E) The certificates issued to Gulf, St. Helens, Socony and Texaco in paragraph (B) above are not transferable and shall be effective only so long as such Applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(F) The grant of the certificates issued in paragraph (B) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by, or against, Gulf, St. Helens, Socony or Texaco. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificates aforesaid for service to Mountain Fuel imply approval of all the terms of the contracts, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificates aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificates.

(G) The gas contracts, each dated June 20, 1962, between Mountain Fuel and St. Helens and Mountain Fuel and Texaco, are hereby accepted for filing as St. Helens Petroleum Corporation FPC Gas Rate Schedule No. 2 and Texaco Inc. FPC Gas Rate Schedule No. 307, to become effective on the date of initial delivery.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PACKWOOD ELECTRIC COMPANY, PROJECT NO. 1289

ORDER ACCEPTING SURRENDER OF LICENSE (MINOR)

(Issued April 22, 1963)

Applicaton was filed on January 30, 1961, by Packwood Electric Company (Licensee) of Packwood, Washington, for surrender of its license for minor Project No. 1289, located on Hager Creek, a tributary of Cowlitz River, in Lewis County, Washington, and affecting lands of the United States within the Gifford Pinchot National Forest.

According to the application, the licensee desires that the license be terminated since the project is not in use. The Forest Service, by letter dated December 19, 1962, advises that the project has been out of service since 1959 and that the lands of the United States occupied by the project have been restored to a condition satisfactory to the Service. While the energy previously generated by the project supplied the town of Packwood, the Forest Service advises that the facilities once served by the project are now being served by other commercial power sources.

Annual charges under the license, in the amount of $10.00, have been paid through December 31, 1961.

The Commission finds:

Acceptance of surrender of the license for Project No. 1289 is appropriate.

The Commission orders:

Surrender of the license for Project No. 1289 is hereby accepted, effective as of December 19, 1962, and subject to the payment through said date of annual charges under the license in the amount of $9.67.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SACRAMENTO MUNICIPAL UTILITY DISTRICT, PROJECT NO. 2101

ORDER WAIVING PENALTY FOR DELINQUENCY IN PAYMENT OF ANNUAL CHARGES

(Issued April 22, 1963)

On January 15, 1963, a statement of the annual charges for the period May 1 through December 31, 1961, under the license for Project No. 2101 was mailed to Sacramento Municipal Utility District, licensee for the project. Payment of the charges was made by the licensee on February 21, 1963. The licensee has requested waiver of penalty for failure to pay the charges within 30 days pursuant to Section 11.27(b) of the Commission's Regulations.

This is the first statement of annual charges rendered for the project. The licensee states that the statement was not received until January 21 and that the delay thereafter was due to the fact that this was the first such statement to be processed for the project by its staff. In view of the above, we believe that the licensee has shown good cause for the extra seven days it required to pay the annual charges.

The Commission finds:

It will not be inconsistent with the public interest to waive the penalty owing by reason of the licensee's delay in payment of the annual charges.

The Commission orders:

The penalty arising out of the delay of Sacramento Municipal Utility District, licensee for Project No. 2101, in the payment of the annual charges under the license for the project for the period May 1 through December 31, 1961, is hereby waived.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CHATHAM STRAIT FISH COMPANY, PROJECT NO. 2013

REFERENCE TO ATTORNEY GENERAL FOR SUIT TO REVOKE LICENSE AND TO COLLECT DELINQUENT ANNUAL CHARGES

(Issued April 23, 1963)

On December 1, 1949, the Commission issued a license to Chatham Strait Fish Company[1] (Licensee) for a period of 20 years terminating on November 30, 1969, for the operation and maintenance of Project No. 2013 located on an unnamed tributary of Crab Bay on Evans Island in the then Third Judicial Division, Alaska, and affecting lands of the United States within the Chugach National Forest.

The license fixed annual charges, pursuant to Section 10 (e) of the Federal Power Act, in the amount of $10.00 payable within 30 days of rendition of a bill therefor. The Licensee paid annual charges through the calendar year 1960. On January 31, 1962 and December 31, 1962, respectively, Licensee was billed for the annual charges for the calendar years 1961 and 1962 totalling $20.00, but such charges have not been paid to date.

In the Commission's last letter to licensee respecting its delinquency, dated July 9, 1962, Licensee was advised that its continued neglect in remitting annual charges and penalties thereon would appear to leave the Commission no alternative but to refer the delinquency and revocation of the license to the United States Attorney General. No reply to such letter has been received.

The Commission finds:

(1) The annual charges for the calendar years 1961 and 1962 were due and payable on March 18, 1962 and February 14, 1963, respectively, and licensee became delinquent in respect to such charges on said dates.

(2) Licensee has, by its failure to pay the annual charges specified, violated the terms of its license.

The Commission orders:

(A) A penalty of five percentum for the first month the amount of the annual charges for the calendar years 1961 and 1962 was delinquent and three percentum for each subsequent month until the full amount of such charges and penalty is satisfied, in accordance with law, is assessed against Licensee pursuant to Section 17 of the Federal Power Act and the Commission's Rules and Regulations.

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[1] Last known address: Chatham Strait Fish Company, % Mr. E. B. Sorensen, 4105 Arcade Building, Seattle 1, Washington.

(B) Licensee's delinquency in payment of annual charges for the calendar years 1961 and 1962 and Licensee's violation of the terms of its license is hereby referred to the Attorney General for the institution of proceedings under Section 26 of the Federal Power Act for revocation of the license for Project No. 2013, for restoration of the lands of the United States involved to a condition satisfactory to the Forest Service, and for the collection of the annual charges under the license for the calendar years 1961 and 1962, to the date on which restoration of the lands has been satisfactorily completed.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

DUKE POWER COMPANY, PROJECT NO. 2232

ORDER AMENDING LICENSE (MAJOR)

(Issued April 23, 1963)

Application was filed August 15, 1962 by Duke Power Company, licensee for major Project No. 2232, located on the Catawba River, North Carolina, and on the Catawba-Wateree Rivers, South Carolina, in the counties of Alexander, Burke, Caldwell, Catawba, Gaston, Iredell, Lincoln, McDowell and Mecklenburg, North Carolina, and in the counties of Chester, Fairfield, Kershaw, Lancaster and York, South Carolina.

The application seeks amendment of the license to reflect a 4,000-kilowatt increase in the generating capacity of the Rocky Creek Development of the project resulting from the replacement of the turbines and generator windings in Units 5 and 6 at that development, as shown on certain revised exhibits filed as part of the application, Commission approval of which is also sought.

As proposed in the application, the turbine capacity of Units 5 and 6 would be increased from 5,200 horsepower to 6,580 horsepower, and the rewinding of the generators will increase each of their capacities from 3,000 kilowatts to 5,000 kilowatts.

Commission approval of the replacement of the turbines and generator windings and of the revised exhibits will be reflected in Article 19 of the license—the annual charge provision, and in the license provision describing the project works of the Rocky Creek Development.

The Secretary of the Army and the U.S. Corps of Engineers, Department of the Army, have advised that the plans of the structures affecting navigation are satisfactory and have been approved in accordance with the provisions of Section 4(e) of the Federal Power Act.

The Commission finds:

(1) The license, amended as hereinafter ordered, is in the public interest.

(2) Public notice of the filing of the application has been given. No protests have been received.

(3) The authorized installed capacity of the project for the purpose of computing the capacity component of the administrative annual charge is 956,000 horsepower, and the annual charge for reimbursing the United States for the costs of administration of Part I of the Federal Power Act, based upon such capacity, as hereinafter provided, is reasonable.

(4) The following described exhibits filed as part of the application conform to the Commission's Rules and Regulations and should be approved as part of

the license for the project and the exhibits hereinafter described as being superseded should be eliminated from the license:

Exhibit J: (FPC No. 2232–62) Sheet 1, General Map and Profile, superseding Exhibit J (FPC No. 2232–2); (FPC No. 2232–63) Sheet 2, Transmission System Map, superseding Exhibit J (FPC No. 2232–3); and (FPC No. 2232–64) Sheet 4, Details of Transmission System, superseding Exhibit J (FPC No. 2232–42).

(5) Exhibit M filed with the Commission on May 15, 1957, as revised September 4, 1957, now part of the license, and as further revised by the staff to reflect the above-mentioned increase in the turbine capacity of Units 5 and 6 and the increase in the generator capacity pertaining to the Rocky Creek Development, conforms to the Commission's rules and regulations and should be reapproved as part of the license for the project.

The Commission orders:

(A) The revised exhibits described in finding (4) above as conforming to the Commission's rules and regulations are hereby approved as part of the license for the project and the exhibits described in the same finding as being superseded are hereby eliminated from the license for the project.

(B) The twice revised Exhibit M referred to in finding (5) above is hereby reapproved as part of the license for the project.

(C) The license for Project No. 2232 is hereby amended, effective as of January 1, 1963, as follows:

PARAGRAPH I. Item 10 under subparagraph (b) of finding (2) of the license is hereby revised to read as follows:

10. *Rocky Creek-Cedar Creek Development* (constructed in 1909 and 1926) located at river mile 96 on Catawba River near Great Falls, South Carolina, consisting of a concrete gravity overflow spillway; a forebay canal on the right bank with an uncontrolled concrete spillway section, a concrete gravity section, and concrete intake and powerhouse section forming the river wall of the forebay canal; a forebay canal on the left bank with an uncontrolled concrete spillway section, a concrete gated spillway section and a concrete intake and powerhouse section forming the river wall; a reservoir with an area of 800 acres at elevation 284.5 and usable storage of 2,296 acre-feet at 3-foot drawdown; Rocky Creek powerhouse containing six-5,200 and two-6,580 horsepower horizontal turbines connected to six-3,000 and two-5,000 kilowatt horizontal generators, respectively; Cedar Creek powerhouse containing three 20,000-horsepower turbines connected to three 15,000-kilowatt generators; a substation; and appurtenant mechanical and electrical facilities.

PARAGRAPH II. Article 19 of the license is hereby revised to read as follows:

Article 19. The Licensee shall pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, one (1) cent per horsepower in the authorized installed capacity (956,000 horsepower) plus two and one-half (2½) cents per 1,000 kilowatt-hours of gross energy generated by the project during the calendar year for which the charge is made.

(D) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance

of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP62-64

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 23, 1963)

On December 27, 1962, El Paso Natural Gas Company (Applicant) filed in Docket No. CP62-64 an application to amend further the Commission's order, issued December 12, 1961, 26 FPC 836, in Docket No. CP62-64 to authorize certain tap installations at a total cost not to exceed $15,000 in lieu of the presently authorized total cost which is not to exceed $12,000, all as more fully set forth in the application to amend.

The subject order granted a "budget-type" certificate of public convenience and necessity authorizing the construction and operation of certain routine main line facilities and the sale and delivery of gas to authorized resale customers during the calendar year 1962. The facilities, among others, included not more than thirty main line taps with standard appurtenances to be installed at various locations at a total cost not to exceed $12,000.

Applicant states that a review of the actual cost incurred in installing 28 of such taps shows that certain of them have exceeded the estimated cost of $400 per unit, and that it is apparent that the $12,000 total cost limitation will be exceeded. Applicant states further that it does not propose to install the two remaining authorized taps, but in order that the said 28 taps may be properly authorized, Applicant requests that the order of December 12, 1961, be further amended, as proposed.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on March 1, 1963, (28 F.R. 2016). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued December 12, 1961, in Docket No. CP62-64 be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued December 12, 1961, in Docket No. CP62-64 by and the same is hereby further amended to authorize a total cost not to exceed $15,000 for the installation of certain tap facilities authorized by said order in lieu of the presently authorized total cost which is not to exceed $12,000, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP62-233

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 23, 1963)

On February 1, 1963, El Paso Natural Gas Company (Applicant) filed in Docket No. CP62-233 an application to amend the Commission's order, issued August 28, 1962, in Docket No. CP62-233, 28 FPC 371, to authorize certain changes in the facilities authorized by said order, all as more fully set forth in the application to amend.

The order of August 28, 1962, issued a certificate of public convenience and necessity authorizing Applicant to sell and deliver natural gas to Nevada Northern Gas Company (Nevada Northern) and to construct and operate, among other things, 98.3 miles of 16-inch O.D. x 0.219-inch w.t. pipeline, a check meter station at the upstream terminus of said pipeline and a sales measuring and regulating station at the downstream terminus of said pipeline.

Applicant states that actual construction mileage for the proposed pipeline was 96.73 miles rather than 98.3 miles as estimated, and that 0.229-inch w.t. pipe was installed in lieu of 0.219-inch w.t. pipe, at no additional cost to Applicant. Applicant states further that it does not now propose to construct the check meter station, but that Nevada Northern will construct check metering facilities on its transmission facilities, 100 miles downstream of the terminus of Applicant's pipeline. Additionally in order to provide necessary accessibility and because of rough terrain, the location of the authorized sales measuring and regulating station has been changed from the downstream terminus of Applicant's pipeline to the upstream terminus of said line.

Accordingly, Applicant requested that the subject order be amended to reflect the foregoing changes.

Due notice of filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on March 12, 1963, (28 F.R. 2373). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued August 28, 1962, in Docket No. CP62-233 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued August 28, 1962, in Docket No. CP62-233 be and the same is hereby amended to authorize the construction and operation of 96.73 miles of 16-inch O.D. x 0.229-inch w.t. pipe in lieu of 98.3 miles of 16-inch O.D. x 0.219-inch w.t. pipe heretofore authorized by said order; to delete from said order authorization to construct and operate the proposed check meter station; and to authorize the proposed change in location of the sales measuring and regulating station, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

LAKE SHORE PIPE LINE CO., DOCKET NO. G–13262

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 23, 1963)

On December 21, 1962, Lake Shore Pipe Line Co. (Applicant) filed in Docket No. G–13262 an application to amend the Commission's order, issued June 29, 1959, in Docket No. G–13262, 21 FPC 904, to reflect a transfer and rearrangement of certain allocations of natural gas authorized by said order, all as more fully set forth in the application to amend.

Said order, among other things, authorized an allocation of 4,000 Mcf of natural gas per day to Diamond Alkali Company (Diamond), a direct industrial customer of Applicant. Applicant proposes herein to transfer Diamond's allocation to The East Ohio Gas Company (East Ohio); thus making East Ohio's total allocation from Applicant 38,080 Mcf daily.

Applicant states that the discontinuance of direct deliveries to Diamond will not result in interruption of service to Diamond since, after the proposed transfer, East Ohio will provide the service to Diamond which is now being provided by Applicant. It is proposed that Applicant will continue deliveries to the Diamond plant, but such deliveries will be for the account of East Ohio.

The application indicates that after the subject rearrangement, East Ohio will be Applicant's only customer being served from its Ashtabula-Fairport, Ohio, line, and that such rearrangement and transfer is the first step in a contemplated re-alignment of Applicant's operations and properties within the Consolidated Natural Gas Company's system. Applicant states that it expects in the near future to sell the Ashtabula-Fairport line to East Ohio, subject to the Commission's approval.

The application further indicates that both East Ohio and Diamond have agreed to the subject proposal.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on February 28, 1963 (28 F.R. 1895). No protest to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued June 29, 1959, in Docket No. G–13262 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued June 29, 1959, in Docket No. G–13262 be and the same is hereby amended to authorize an increase of 4,000 Mcf daily in Applicant's contract demand deliveries to The East Ohio Gas Company, resulting in a total daily contract demand for East Ohio of 38,080 Mcf, and to cancel Applicant's allocation of 4,000 Mcf of natural gas per day for firm service to Diamond Alkali Company, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

LONE STAR GAS COMPANY, DOCKET NO. CP63-213

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued April 23, 1963)

On January 23, 1963, Lone Star Gas Company (Applicant) filed in Docket No. CP63-213 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities for the transportation and delivery of natural gas to a new plant to be constructed by Applicant's existing customer, Acme Brick Company (Acme) in Denton County, Texas, and for permission and approval to abandon certain other facilities, all as more fully set forth in the application on file with the Commission.

Applicant proposes to construct and operate 0.65 mile of 6-inch pipeline from a connection on its line F-8 to Acme's proposed new plant, together with necessary measuring and regulating facilities. The application shows that Acme's present plant will be dismantled upon completion of its new plant about the end of 1965. At that time, Applicant states that it will abandon the present measuring and regulating station now serving Acme; however, until such abandonment, gas service will be required at both the old and the new plant locations. Applicant states further that the pipeline facility serving the old plant also serves other customers and will, accordingly, remain in service.

The application indicates that Acme will use natural gas at its new plant for processing in the manufacture of brick and for plant and office space heating.

Acme's third year peak day and annual natural gas requirements for its new plant are estimated to be 2,520 Mcf and 560,000 Mcf, respectively. The estimated cost of Applicant's proposed facilities is $24,320, which cost will be financed by funds currently on hand. Net salvage value of the facilities to be abandoned is estimated to be $1,260.

Pursuant to due notice, a public hearing was held in Washington, D.C., on April 11, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Lone Star Gas Company, a Texas corporation having its principal place of business in Dallas, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 11, 1944, in Docket No. G-442 (4 FPC 565).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities and the trans-

portation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) The facilities to be abandoned, as heretofore described, are subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(5) Such abandonment by Applicant, as heretofore described, is permitted by the public convenience and necessity, and an order authorizing and approving same should be issued as hereinafter ordered.

(6) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Lone Star Gas Company, to construct and operate the proposed facilities for the transportation and delivery of natural gas, as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 6 months from the date on which this order issues.

(D) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application in this proceeding, be and the same is hereby granted.

(E) Applicant shall advise the Commission of the date of abandonment within 30 days of the date thereof.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MISSISSIPPI RIVER FUEL CORPORATION, DOCKET NO. CP63-190

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 23, 1963)

On January 2, 1963, Mississippi River Fuel Corporation (Applicant) filed in Docket No. CP63-190, a budget-type application pursuant to Section 7(c) of

the Natural Gas Act for a certificate of public convenience and necessity authorizing the relocation, alteration, or reconstruction of existing facilities, or the construction and operation of substitute facilities during the calendar year 1963, all as more fully represented in the application in this proceeding.

Applicant contends that it may become necessary or desirable to move, relocate, alter, or reconstruct existing pipeline facilities, or to construct substitute facilities for existing facilities in order to accommodate the desires or activities of others including federal, state, and local authorities, landowners, and direct industrial and resale customers. Such changes normally will be made where existing facilities interfere with highway, levee or other federal, state, or local improvement projects, or with the proposed utilization or sale of land by railroads and others, or where changes in Applicant's facilities are required in connection with changes in the plant facilities by direct industrial or utility customers of Applicant. The costs involved will usually be borne entirely or partly by the party desiring the change and will not ordinarily involve any increase or decrease in the designed capacity of the particular facilities, nor any essential change in the character of Applicant's service to any of its customers.

The total cost of the proposed facilities will not exceed a maximum of $600,000 and no single project will exceed a total cost of $250,000. Applicant states that the Missouri State Highway Commission is contemplating the widening of State Highway P which parallels for some distance its 20-inch St. Louis pipeline. On the basis of rough estimates available at this time, the relocation could cost approximately $225,000. The maximum single project cost of $250,000 was selected with this problem in mind, and with some allowance being made since no definite plan has been chosen. The application is limited to expenditures for construction during the calendar year 1963 and for not more than twenty projects during this period.

Pursuant to due notice, a public hearing was held in Washington, D.C., on April 9, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Mississippi River Fuel Corporation, a Delaware corporation having its principal place of business at 9900 Clayton Road, St. Louis 24, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefore should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act

and particularly the general terms and conditions set forth in paragraphs (a) and (e) of such Regulations.

(6) Applicant shall submit a report by March 1, 1964, giving all pertinent details of the construction performed under the certificate, including the names and locations of customers and the respective projects, the facilities installed, and the actual final cost of each project.

(7) The authorization hereinafter granted should be limited to the calendar year 1963 covering not more than twenty projects during that time, and the total expenditures for existing facilities to be relocated, altered, or reconstructed, or for the construction and operation of substitute facilities for existing facilities, should be limited to a maximum of $600,000 with no single project to exceed a cost of $250.000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Mississippi River Fuel Corporation to relocate, alter or reconstruct existing facilities, or to construct and operate substitute facilities for existing facilities during the calendar year 1963, all as more fully set forth in the application.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicants shall submit a report by March 1, 1964, giving all pertinent details of the construction performed under the certificate, including the names and locations of customers and the respective projects, the facilities installed, and the actual final cost of each project.

(D) The authorization granted in paragraph (A) above is hereby limited to the calendar year 1963 covering not more than twenty projects during that time, and the total expenditures for existing facilities to be relocated, altered, or reconstructed, or for the construction and operation of substitute facilities for existing facilities, are hereby limited to a maximum of $600,000 with no single project to exceed a cost of $250,000.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-169

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 23, 1963)

On December 14, 1962, Northern Natural Gas Company (Applicant) filed in Docket No. CP63-169 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas to Kansas-Nebraska Natural Gas Company, Inc., during the six month period from January 1, 1963 to June 30, 1963 at an

average daily volume ranging from 30 to 40 million cubic feet per day. The sales will be made at two existing delivery points.

Applicant states that the reason for the proposed short term sale is that it has not produced the allowable quota of gas from the Kansas-Hugoton Field and is in danger of losing its allowable.

On February 4, 1963 a temporary authorization was issued to the Applicant to make the sales applied for.

Pursuant to due notice, a public hearing was held in Washington, D.C., on April 8, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30 (c) (1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Northern Natural Gas Company, having its principal place of business in Omaha, Nebraska, is a natural gas company within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943 in Docket No. G–280 (3 FPC 967).

(2) The sale and delivery of natural gas hereinbefore described, as more fully described in the application, as supplemented, will be made in interstate commerce subject to the jurisdiction of the Commission, and to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The sale and delivery of natural gas proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c) (3), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to sell and deliver natural gas as hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (a), (c) (3), and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit a report in writing to the Commission within 30 days from the date of last delivery of gas to Kansas-Nebraska Natural Gas Company, Inc., but not later than August 1, 1963, showing the exact volumes of gas delivered and sold.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

REVISION OF REGULATIONS RELATING TO COMPUTATION OF ANNUAL CHARGES FOR HEADWATER BENEFITS TO OWNERS OF NON-FEDERAL HYDROELECTRIC PROJECTS, DOCKET NO. R-221

ORDER NO. 268

AMENDING SUBCHAPTER B OF REGULATIONS UNDER THE FEDERAL POWER ACT

(Issued April 23, 1963)*

The Commission has under consideration in this proceeding an amendment of its Regulations under the Federal Power Act with respect to the computation of annual charges for headwater benefits to owners of non-federal hydroelectric projects, so as to provide, for the first time, procedures to be used in computing such charges without a hearing.

The specific amendment herein considered would amend and renumber present §§ 11.25, 11.26, and 11.27 as §§ 11.28, 11.29, and 11.31, respectively; and would promulgate four new sections in Part 11: §§ 11.25, 11.26, 11.27 and 11.30. These revisions would require both the upstream reservoir owner, and the owner of each downstream non-federal hydroelectric power plant to submit, annually, certain necessary data concerning their facilities and operations (§ 11.26). In addition, three billing rules, applicable to headwater benefit billings rendered without a hearing only, are established. (§ 11.27) The revisions also prescribe that billings will include a separate charge for the costs of the Commission staff studies and that once an average annual payment has been determined, bills in that amount will be submitted annually until revision is warranted by changed conditions in the area (§ 11.30). And, they would require the service of billings on parties in the area; establish a procedure for protesting, or requesting hearings with regard to such billings; and prescribe a penalty for delinquent payments. (§ 11.31).

General public notice of the proposed rulemaking, including the proposed amendments and additions to Part 11, was given by issuance of a Notice of Proposed Rule Making on August 24, 1962 which was published in the Federal Register on August 31, 1962 (27 F.R. 8744). Pursuant to requests from several of the interested persons, the Commission, on October 8, 1962, issued a notice extending the time to and including November 30, 1962 for the submission of written comments and views respecting the proposed amendment. Several conferences concerning the proposed rule were attended by interested parties and the Commission's staff.

In preparing these amendments to the Regulations, careful consideration has been given to the comments and suggestions received from the 22 respondents to the Notice of Proposed Rule Making, and those received at conferences between the Staff, representatives of utilities, State agencies, the Department of the Interior, and the Corps of Engineers, Department of the Army. In general, these comments reflected a sympathy with the objectives of the Regulation, but many respondents expressed concern that the proposed rule would not be appropriate for the conditions prevailing in their particular power systems, especially in mixed hydro-thermal systems where the hydroelectric project is used as a peaking plant.

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*Published in the Federal Register on April 27, 1963 (28 F.R. 4176)

Some respondents suggested that equity dictated the necessity of considering the net benefits received, only. Thus, it was suggested that the failure of the proposed rule to recognize that the downstream project may confer substantial benefits upon an upstream project, defeated the equity of any resultant assessment. Comments were directed to the alleged failure of the proposed rule to recognize that all releases of storage during the critical period may not necessarily benefit the downstream user. Recommendations were also received calling for maximum limitations on the charges to be assessed. In addition to certain suggested editorial comments, and those directed to the need for more clarity of definition of the terminology of the rule, many adverse comments were directed to the provisions of the Regulation placing the burden of going forward in any resultant hearing on the assessed project owner requesting the hearing. Finally, comments were directed to the failure of the proposed rule to provide all affected parties with information concerning the assessments against all other parties, and to the lack of clarity concerning the right of the reservoir owner to request a hearing on the assessments.

The comments submitted in response to the Notice issued August 24, 1962, have been particularly helpful in drafting the rule hereinafter adopted which reflects the Commission's considered judgment on the various comments and recommendations received. Upon consideration of the entire record in this proceeding, the *Commission finds:*

The amendments hereinafter adopted are necessary and appropriate in order to carry out the provisions of the Federal Power Act.

Acting pursuant to the authority granted by the Federal Power Act, particularly sections 10(f) and 309 thereof (41 Stat. 1068, 49 Stat. 842, 858) (16 U.S.C. 803, 825h), *the Commission orders:*

(A) Part 11 of subchapter B, Regulations under the Federal Power Act, Chapter I of Title 18, Code of Federal Regulations, is amended by amending the existing text of §§ 11.25, 11.26, and 11.27, and redesignating them as §§ 11.28, 11.29, and 11.31, and adding new §§ 11.25, 11.26, 11.27 and 11.30. As so redesignated, amended, or added, §§ 11.25 through 11.31 read as follows:

§ 11.25 Headwater benefits.[1]

Annual charges will be assessed or determined and fixed by the Commission against the owners of non-federal power projects directly benefited by a storage reservoir or other headwater improvement of the United States, or its licensees or permittees, for an equitable part of the annual charges for interest, maintenance, and depreciation on such reservoir or other headwater improvement.

Definitions: As these terms may be used in §§ 11.25 through 11.31 of this part, the following definitions shall apply:

(1) *Critical period:* "Critical period" shall mean that period during which all power storage at reservoirs would be released for power production, assuming a recurrence of the most adverse streamflow conditions of record for the area.

(2) *Power storage:* "Power storage" shall mean that portion of the water stored in a reservoir which would be used to produce electric energy during the critical period.

(3) *Area:* "Area" shall mean the territory to be covered by a separate headwater benefits determination. It may comprise a single watershed, or it may

[1] § 13.1, Settlements Involving Headwater Benefits, provides that licensees and permittees may enter into agreements as to the amount of annual payments for headwater benefits, subject to approval by the Commission. §§ 11.25, 11.26, 11.27, and 11.30 shall not be applicable where such settlements are pending approval under § 13.1 or have been approved by the Commission.

comprise two or more watersheds or parts thereof in which all, or substantially all, hydroelectric projects are coordinated so as to produce a critical period common to all such projects.

(4) *Party:* "Party" shall mean the owner of a non-federal downstream power project in the area, which is directly benefited by an upstream reservoir of a licensee, a permittee, or the United States; or the owner of such upstream reservoir; and, when the United States is an upstream reservoir owner, it shall refer to the operating and/or marketing agencies of the United States, with respect to such reservoir.

§ 11.26 Information to be submitted concerning headwater benefits.

In order to facilitate annual assessments for headwater benefits, necessary data available to the affected parties shall be filed with the Commission in quadruplicate and copies served on all other affected parties on or before October 1, 1963, and therafter each year on or before the last day of the third month following the close of the calendar year; *Provided* that, if all parties affected by a specific headwater benefit determination shall agree, a fiscal year period may be established for the determination of headwater benefit payments and (after 1963) the information shall be furnished on or before the last day of the third month following the close of the fiscal year. The calendar year or fiscal year period is hereinafter referred to as the "fiscal period".

(a) *Data to be supplied (where applicable) by the licensee, permittee, or appropriate federal agency, for each storage reservoir upstream from a non-federal power plant having an installed capacity greater than 2,000 horsepower.*[1]

(1) Name and location of the storage project, including name of stream on which located.

(2) Total name plate rating of installed generating capacity of the project expressed in kilowatts.

(3) Total storage capacity of the reservoir and a breakdown to show the capacity allocated to each of its uses, such as dead storage, power storage, irrigation storage, and flood control storage. Identify by reservoir elevations the portion of the reservoir assigned to each of its respective storage functions. In the event the same storage capacity is used for more than one purpose, show the total capacity for each type of storage. For such a reservoir the total of the different types of storage capacity will be in excess of the total storage capacity of the reservoir.

(4) An elevation-capacity curve, or a tabulation of reservoir pool elevations and corresponding reservoir storage capacities.

(5) Copy of rule curves, coordination contracts, agreements, or other relevant data governing the release of water from the reservoir, including a separate statement of their effective dates and the extent to which downstream power developers are assured of storage releases.

(6) A curve, or a tabulation, showing actual reservoir pool elevations throughout the immediately preceding fiscal period.

(7) The critical period and the amount of storage that would be withdrawn from the reservoir during a recurrence of the critical period.

(8) The estimated average net head during the critical period.

(9) The estimated average over-all water use in cubic feet per second per kilowatt, corresponding to the average net head during the critical period, and estimates of the electric energy that would be produced during the critical period

[1] For those items where data for the current fiscal period are the same as data furnished for a prior fiscal period, make this notation and give the fiscal year for which the data were reported. When needed, special requests will be made for additional data.

at the at-site plant from natural flow, from storage at site, and from storage upstream, each item shown separately.

(10) Investment costs.

(i) The total investment cost of the headwater improvement project at the close of the fiscal period, or at a date during the fiscal period. Specify the date.

(ii) The investment cost of joint-use facilities[3] on the date specified in (i) immediately above. Specify the items included as joint-use facilities.

(iii) The allocation of such investment cost of joint-use facilities to power and to each of the other project purposes to which costs have been allocated, such as flood control, navigation, irrigation, and recreation.

(iv) The cost of land included in the investment cost of joint-use facilities allocated to power.

(11) Annual costs.

(i) Annual cost of interest, maintenance, and depreciation on the joint-use facilities (each item shown separately). Show the annual interest rate and the method used to compute the depreciation charge, or the interest rate and period used to compute amortization if used in lieu of depreciation.

(ii) Annual cost of interest, maintenance, and depreciation on joint-use facilities allocated to power and to each of the other project purposes (each item shown separately).

(iii) Estimated long-term average, or average of representative years, of the annual costs requested in (i) and (ii) immediately above, stating the years used in obtaining the averages.

(12) Other data considered relevant by the party.

(b) *Data to be supplied by the owner of each hydroelectric power plant, having an installed capacity greater than 2,000 horsepower, downstream from a storage reservoir of a licensee, or permittee, or of the United States.*[4]

(1) Name and location of the hydroelectric power plant, including the name of the stream on which located.

(2) Total name plate rating of the installed generating capacity of the plant expressed in kilowatts.

(3) The critical period and the estimated average net head at each plant during the critical period.

(4) The estimated average over-all water use in cubic feet per second per kilowatt, corresponding to the estimated average net head during the critical period, and estimates of the electric energy that would be produced at the downstream power plant during the critical period from storage from each storage reservoir upstream. For the latter estimate, explain fully if any spillage of upstream storage releases is assumed.

(5) Other data considered relevant by the party.

§ 11.27 Computation of headwater benefit charges for billings rendered without a hearing.

Annual charges will be assessed or determined and fixed by the Commission, for billings rendered without a hearing only, against each owner of a non-federal

[3] The headwater improvement project, as used in §§ 11.26(a) and 11.27(a), comprises specific facilities and joint-use facilities. A specific facility serves a single purpose only. An example is the at-site powerhouse which provides at-site power benefits only. A joint-use facility serves more than one purpose. As used herein, at-site power benefits and downstream power benefits are separate purposes. Therefore, a dam and reservoir providing only power benefits would be a joint-use facility if the benefits were provided to a downstream power plant in addition to the at-site power plant.

[4] For those items where data for the current fiscal period are the same as data furnished for a prior fiscal period, make this notation and give the fiscal year for which the data were reported. When needed, special requests will be made for additional data.

power project, having an installed capacity in excess of 2,000 horsepower, which is directly benefited by a storage reservoir or other headwater improvement of the United States or its licensees or permittees, on the following basis:

(a) Whenever power generating facilities are installed at such headwater storage reservoir or improvement, and the principal power benefits from stream-flow regulation are derived from use of power storage,[5] and the owners of downstream power developments have assurance of scheduled storage releases, then the portion of the average annual cost of interest, maintenance and depreciation on the joint-use facilities of each headwater improvement project to be borne by power, both at site and downstream, is to be apportioned to storage and at-site head functions. The amount of such cost to be apportioned to the storage function shall be determined by multiplying such annual cost to be borne by power by the ratio of the electric energy that would be produced during the critical period (at site and downstream) from at-site storage[6] to the sum of the electric energy that would be produced during the critical period (at site and downstream) from at-site storage and the electric energy that would be produced at site during the critical period from natural flow and from at-site and upstream storage. The amount of such annual cost of the headwater improvement thus apportioned to the storage function shall be apportioned to the at-site power plant and to each downstream plant in direct proportion to the electric energy that would be produced at each plant during the critical period from at-site storage. The average annual cost thus apportioned to a downstream non-federal power plant shall be the annual billing to be made for headwater benefits.

(b) Whenever power generating facilities are installed at such headwater storage reservoir or improvement, and the principal power benefits from stream-flow regulation are derived from storage other than power storage, or the owners of downstream power developments do not have assurance of scheduled storage releases, then the portion of the average annual cost of interest, maintenance, and depreciation on the joint-use facilities of each headwater improvement to be borne by power, both at site and downstream, is to be equitably apportioned among the power plants benefited, and the annual cost thus apportioned to each downstream power plant shall be the annual billing to be made for headwater benefits.

(c) Whenever power generating facilities are not installed at such headwater storage reservoir or improvement: the value of the power gains at each downstream plant together with the value of benefits for other purposes, such as flood control, navigation, irrigation, and recreation, resulting from the headwater improvement will be used in allocating the annual costs of the headwater improvement project to power and other purposes. The average annual costs of interest, maintenance, and depreciation thus apportioned to power shall be apportioned to each downstream plant in direct proportion to the average annual power gain at each plant. The average annual cost thus apportioned to each downstream power plant shall be the annual billing to be made for headwater benefits.

§ 11.28 Effective date.

All annual charges, except those imposed under section 10(f), shall commence upon the effective date of the license unless some other date or dates are fixed in the license.

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[5] As defined in § 11.25.

[6] If the critical period is in excess of 12 months and the storage reservoir is operated during the critical period to provide seasonal storage, the at-site storage shall be considered to be the sum of the seasonal storage releases during the critical period. Seasonal storage is storage held over from the annual high-water season to the following low-water season.

§ 11.29 Adjustment of annual charges.

All annual charges, except those imposed under section 10(f), shall continue in effect as fixed unless changed as authorized by law.

§ 11.30 Average annual payments for headwater benefits.

After an average annual payment for headwater benefits has been determined, a bill in that amount will be submitted annually until a revision is warranted by a change in the operation of the projects, in the development of the river basin, or in the costs to be apportioned under section 10(f). The costs of Commission staff studies made for the purpose of estimating annual headwater benefit charges shall be included as a separate item in bills rendered to beneficiaries of headwater improvements.

§ 11.31 Time for payment, protest or request for hearing, penalties.

(a) *Payment of charges.* Annual charges shall be paid to the Commission within 30 days of rendition of a bill therefor except that persons located outside the continental limits of the United States shall be allowed a period of 45 days after rendition of the bill, and except that annual charges for headwater benefits shall be paid within 60 days of rendition of a bill therefor.

(b) *Billings for headwater benefits.* Copies of bills rendered to downstream owners for annual charges for headwater benefits shall be served on all other parties in the area, and shall specify the parties served.

(c) *Protest or request for hearing.* Any protest against an assessment for headwater benefits, or request for a hearing thereon, must be filed within 60 days from the date of the billing and a copy thereof shall be served on all other parties in the area. The burden to adduce evidence at any hearing will be on any party or parties requesting a hearing. At any hearing which is requested by the owner of a downstream plant in connection with annual charges for headwater benefits, the burden will be on such owner to adduce evidence that the amount billed exceeds the value of the benefits received for power purposes unless such owner has paid, under protest, the amount billed within the time provided in paragraph (a) hereof.

(d) *Accounting for headwater benefit payments pending protests and requests for hearing.* All payments received for headwater benefits charges from billing rendered pursuant to this section shall be retained by the Commission in a special deposit account, and disbursements therefrom shall not be made until the expiration of the 90th day from the date of the billing. If a protest or request for hearing is filed by any party in the area, no disbursements shall be made from payments received from parties in the area until directed by the Commission.

(e) *Penalties.* In case of failure on the part of any person to pay annual charges within the periods specified in paragraph (a) hereof, a penalty of 5 percent of the total amount so delinquent is assessed and added to the total charges which shall apply for the first month or part of month so delinquent with an additional penalty of 3 percent for each full month thereafter until the charges and penalties are satisfied in accordance with law: *Provided, however,* That for good cause shown, the Commission may, by order, waive any penalty imposed by this Subsection.

[Secs. 10 (f) and 309; 41 Stat. 1068, 49 Stat. 842, 858; 16 U.S.C. 803, 825h.]

(B) The amendments prescribed herein are effective on and after June 1, 1963.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PANHANDLE EASTERN PIPE LINE COMPANY AND TRUNKLINE GAS COMPANY, DOCKET NO. CP63-123

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 23, 1963)

On November 6, 1962, as supplemented on January 7, 1963, Panhandle Eastern Pipe Line Company (Panhandle) and Trunkline Gas Company (Trunkline) filed in Docket No. CP63-123 a joint application pursuant to Sections 7(b) and (c) of the Natural Gas Act for an order granting permission and approval to abandon certain natural gas facilities and sales, and the issuance of a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the sale of natural gas for resale, all as more fully represented in the application in this proceeding.

Applicants seek authorization more specifically for (a) Trunkline to construct and operate a measuring and regulating station and to commence the sale of gas to Central Illinois Public Service Company (Cipsco) in Vermillion County, Illinois for resale to the town of Hoopeston, Illinois; (b) Panhandle to discontinue sales of gas to Cipsco at the Hoopeston city gate, transferring these contracted volumes again to Cipsco at a tap in Scott County, Illinois, for resale to the towns of Jerseyville, Manchester, and Kane, Illinois; (c) Panhandle to sell to Cipsco approximately 3.85 miles of four-inch pipeline and appurtenances through which Cipsco will receive gas from Trunkline; and (d) Panhandle to construct and operate a measuring and regulating station and to commence the sale of the volumes of gas previously delivered at Hoopeston, to Cipsco in Scott County, Illinois, for resale to the three above mentioned towns.

The joint application states that at the present time, the natural gas distributed to Cipsco in the City of Hoopeston is purchased from Panhandle. In order to make this delivery, Panhandle transports the gas from its main line, through its Danville lateral, and thence through the Hoopeston lateral which consists of a four-inch pipeline installed in 1933. Since Hoopeston is at the far end of such lateral, the natural gas for Hoopeston is being transported in a small diameter line for a distance of approximately 46 miles from Panhandle's main line. In Docket No. G-5979, the Commission directed Panhandle, pursuant to Section 7(a) of the Natural Gas Act to establish a delivery point for a municipal distribution system to serve the Village of Rossville at a point approximately five miles south of Hoopeston, and to provide Rossville with a contract demand of 643 Mcf. Since this lengthy small diameter lateral is now being used to serve both Rossville and Hoopeston, the capacity limitations of the lateral have restricted the availability of additional supplies to customers served by the Hoopeston lateral. As a consequence, Hoopeston has been excluded from recent expansion because of capacity limitations. In order to alleviate the present shortage of gas at Hoopeston, Cispco has made arrangements with

Trunkline to purchase natural gas from that company, and to purchase the above-mentioned pipeline from Panhandle.

Trunkline proposes to sell natural gas to Cipsco, for resale in Hoopeston, a maximum daily contract quantity of 4,000 Mcf which third year annual amount comes to 547,899 Mcf of natural gas. The joint application does not contemplate any increase in Cipsco's present contract demand of 94,000 Mcf from Panhandle during the five winter months to be distributed to the three towns of Jerseyville, Manchester, and Kane. The daily contract quantity for that delivery will be 2,500 Mcf.

Panhandle estimates that the measuring and regulating station it plans to construct will cost approximately $21,000 to be financed from funds on hand. Trunkline estimates that its proposed facilities will cost approximately $20,000 to be financed from funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on April 10, 1963, respecting the matters involved in and the issues presented by the joint application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicants, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business at P.O. Box 1348, Kansas City 41, Missouri, and Trunkline Gas Company, a Delaware corporation having its principal place of business at P.O. Box 1642, Houston 1, Texas, are "natural-gas companies" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof as well as the sale of natural gas by Applicants are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The abandonment of the facilities and sales hereinbefore described, as more fully described in the application in this proceeding, is subject to the jurisdiction of the Commission under the provisions of Section 7(b) of the Natural Gas Act.

(4) Applicants are able and willing properly to do the the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities as well as the sale and delivery of natural gas, both proposed by Applicants, are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) The abandonment of the proposed facilities and sales by Applicant is required by the public convenience and necessity and the order granting permission to so abandon these facilities and sales should be issued as hereinafter ordered and conditioned.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas

Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (1), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(8) Permission and approval to abandon the facilities and sales as described in the application, shall not be construed as a waiver of the requirements of the Uniform System of Accounts and the filing of proposed accounting entries upon the consumation of the sale of the facilities involved.

(9) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicants, Panhandle Eastern Pipe Line Company and Trunkline Gas Company, to construct and operate certain natural gas facilities and to sell natural gas for resale, as hereinbefore described in the application in this proceeding, upon the terms and conditions of this order.

(B) Permission for and approval of the abandonment by Applicant, Panhandle Eastern Pipe Line Company, of the facilities and sales as hereinbefore described in the application in this proceeding, be and the same is hereby granted upon the terms and conditions of this order.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (1), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(D) Permission and approval to abandon the facilities and sales as described in the application, shall not be construed as a waiver of the requirements of the Uniform System of Accounts and the filing of proposed accounting entries upon the consummation of the sale of the facilities involved.

(E) The facilities hereby authorized and the sale and delivery of natural gas hereby authorized, shall respectively, be construed and put into operation, and shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

WISCONSIN FUEL AND LIGHT COMPANY, DOCKET NO. CP63-210

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued April 23, 1963)

On January 21, 1963, Wisconsin Fuel and Light Company, (Applicant) a Wisconsin corporation of Manctowoc, Wisconsin, a public utility engaged in the distribution and sale of natural gas in accordance with authorizations by the State of Wisconsin, filed in Docket No. CP63-210 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan-Wisconsin Pipe Line Company, a natural gas company, to extend its

transmission facilities and to establish physical connection with the facilities proposed by applicant to be constructed in and around the Village of Cleveland, Wisconsin for the purpose of distributing and selling natural gas to the inhabitants thereof for ultimate consumption, all as more fully set forth in the application as supplemented.

Applicant is duly authorized by Ordinance of the village affected and by certificate issued by the Public Service Commission of Wisconsin to construct the proposed facilities and to engage in the business of distribution and sale of natural gas in the area.

The estimated total cost of the proposed facilities by the applicant is $120,287 to meet the third year stage of development. No special public financing will be required to finance the costs of construction.

Applicant estimates its peak day and annual requirements for the third year to be 375 Mcf and 65,666 Mcf respectively.

On February 7, 1963, Michigan-Wisconsin Pipe Line Company filed an answer to the application stating that in view of the *de minimis* nature of the volumes of gas involved it can provide the requested service without the construction of additional main line facilities. It further states that it has available unallocated reserves sufficient to meet requests for peak day service of 3,047 Mcf and that it is willing to enter into a service agreement with the applicant for the volumes requested by it.

Notice of the application was issued on March 14, 1963, and published in the Federal Register on March 21, 1963 (28 F.R. 2842). No protest, request for hearing, or petition to intervene has been received.

The Commission finds:

(1) Applicant, Wisconsin Fuel and Light Company, is a public utility organized under the laws of Wisconsin and is legally authorized to construct and operate the proposed natural gas facilities and to sell and distribute natural gas in the Village of Cleveland and its environs.

(2) Michigan-Wisconsin Pipe Line Company is a natural gas company within the meaning of the Natural Gas Act as heretofore found by the Commission in its order November 30, 1956 in Docket No. G–669 (5 FPC 953).

(3) It is necessary and in the public interest to direct Michigan-Wisconsin Pipe Line Company to establish physical connection of its gas transmission facilities with the facilities to be constructed by the applicant for the purposes described in the application including the sale of up to 375 Mcf of natural gas per day on peak days and in volume of 65,666 Mcf per annum.

(4) Applicant should begin the taking of gas from Michigan-Wisconsin Pipe Line Company within one year from the date of the issuance of this order.

The Commission orders:

(A) Michigan-Wisconsin Pipe Line Company be and hereby is directed to establish physical connection of its transmission facilities with the facilities to be constructed by applicant as hereinbefore described and to sell and deliver up to 375 Mcf per day and 65,666 Mcf per year in accordance with a service agreement between the parties to be made and filed with the Commission before the commencement of sales.

(B) Applicant shall commence the purchase of gas as proposed within one year from the date of issuance of this order.

(C) Michigan-Wisconsin Pipe Line Company shall report in writing to the Commission within ten days after the commencement of service to applicant.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

AMERICAN LOUISIANA PIPE LINE COMPANY, DOCKET NO. G-2306; MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. G-2327; AMERICAN LOUISIANA PIPE LINE COMPANY, DOCKET NO. G-10396; PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. G-11061; TRUNKLINE GAS COMPANY, DOCKET NO. CP60-22 (PHASE TWO); PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP60-40; PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP60-60; PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP61-36; PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP61-136

ORDER DENYING MOTIONS TO REOPEN PROCEEDINGS, FOR LEAVE TO FILE RESPONSE TO EXCEPTIONS AND FOR ORAL ARGUMENT

(Issued April 24, 1963)

On January 22, 1963, the presiding examiner issued his initial decision on the remaining issues in the above-entitled proceedings. The examiner found seven issues remaining for decision; two of which involved possible service to Bushnell, Illinois and Milford, Illinois. The matter is now pending before us for decision.

On February 11, 1963, Illinois Power Company (Illinois Power) filed exceptions to the decision, and, in the alternative a petition to reopen the proceedings and a motion for oral argument. Illinois Power's pleading concerns service to Bushnell.

On March 18, 1963, the Village of Milford filed a motion for leave to file a response to exceptions filed by Trunkline, or, in the alternative, for a reopening of the proceedings. On April 1, 1963, Trunkline Gas Company (Trunkline) and Panhandle Eastern Pipe Line Company (Panhandle) submitted an answer to Milford's motion and a motion to sever from the consolidated proceedings the issues as to Milford and Bushnell.

We are concerned, at this time, only with the above noted motions and petitions. We shall consider in a future order our decision on the merits in these proceedings. The motion to sever filed by Trunkline and Panhandle does not seek the severance of specific proceedings from the consolidated matter, but only of issues which must be determined on the merits. At such time as we do determine the merits of the pending issues, we can best decide the manner in which to handle those matters which, in view of the exceptions taken, appear controversial. We shall, therefore, defer action on the motion to sever.

Illinois Power's motion to reopen the proceedings is specifically dependent upon a grant by the Commission of the request by Bushnell. Consequently, any action which we might take upon this motion would be unnecessary at this time. We shall, therefore, defer action upon this request.

Illinois Power also requested oral argument with respect to the foregoing matter. This matter was heard upon an extensive record during which ample opportunity to present evidence was afforded. Briefs were filed which adequately explained the issues involved and the positions taken; exceptions filed fully present Illinois Power's position. We find that no advantage would be served by the grant of oral argument in this proceeding. The motion will be denied.

Milford's motion to file a response to the exceptions filed by Trunkline complains primarily of the inclusion by Trunkline, in its exceptions, of a copy of a Petition under Section 322, Chapter XI, of the Bankruptcy Act by Panama-

Williams Corporation, a construction company which had contracted to build Milford's transmission lateral. This document was not in the record before the Examiner.

At such time as the Commission does act upon the issues here involved, it will rely upon the evidence of record. The overall feasibility of the project proposed will, of course, be material to the determination involved. However, we cannot assume, until such time as a decision on the merits is made, that the proposed documents proferred by both Trunkline and Milford would be material to the decision based upon the evidence of record. Evidence has been entered into the record upon which the examiner based a decision; exceptions were taken. We shall render our decision upon that record. At such time as our decision is made and the question of additional new evidence may be shown to be material, the parties may renew their request to adduce new evidence. Until it is shown that the proferred new changes in evidence are material, it would appear that the motion is premature.

The Commission orders:

(A) The motion for argument filed by Illinois Power Company is hereby denied.

(B) The motion by the Village of Milford, Illinois, for leave to file a response to exceptions filed by Trunkline Gas Company, or in the alternative to reopen the proceeding is hereby denied.

By Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

COMMUNITY PUBLIC SERVICE COMPANY (A DELAWARE CORPORATION), DOCKET NO. E-7084

ORDER AUTHORIZING DISPOSITION OF FACILITIES

(Issued April 24, 1963)

Community Public Service Company, a Delaware corporation (Community Delaware), filed an application on March 14, 1963, for an order, pursuant to Section 203 of the Federal Power Act, for authorization to merge into Community Public Service Company, a Texas Corporation (Community Texas).

Community Delaware furnishes electricity to 103 communities and natural gas to 3 communities in several sections of Texas, and it furnishes electricity to 12 communities in New Mexico. The total population served by Community Delaware is estimated at 290,000. Community Delaware's net plant was recorded at $42,669,000 as of December 31, 1962, and it received total operating revenues of $21,477,000 in the year 1962.

Community Delaware was incorporated in 1934. At the time of its incorporation, it did business in Kentucky, Louisiana, New Mexico and Texas, and it had subsidiaries which did business in Arizona and Oklahoma. The company has disposed of its properties in Kentucky and Louisiana, and the properties of its former subsidiaries in Arizona and Oklahoma also have been sold. At the present time, approximately 80% of the Company's properties and assets are located in Texas and approximately 20% are located in New Mexico.

Community Delaware proposes to change its corporate domicile from Delaware to Texas and for that purpose to organize a wholly-owned subsidiary, Community Public Service Company, a Texas corporation (Community Texas). The

application states that the State of Texas has adopted a corporation code substantially similar to the Uniform Business Corporation Act, and that its statutes are as favorable to corporate enterprise as those of the State of Delaware.

Community Delaware will then be merged into Community Texas in accordance with the terms and conditions of an Agreement and Plan of Merger to be dated as of April 26, 1963. Community Texas will succeed to all of Community Delaware's rights, privileges and franchises; to all of its properties, real, personal and mixed; and will assume all of its liabilities and obligations. Community Delaware will cease to exist after the merger.

Community Delaware has Capital Stock as follows:

Common Stock, par value $10 per share:

Authorized—2,000,000 shares, aggregate par value of $20,000,000;

Outstanding—1,231,871 shares, aggregate par value of $12,318,710.

Cumulative Preferred Stock, par value $100 per share:

Authorized—60,000 shares, aggregate par value of $6,000,000;

Outstanding—30,000 shares of 5.72% Cumulative Preferred, Series A, aggregate par value of $3,000,000.

Community Texas will have the same amounts of authorized and outstanding Capital Stock as Community Delaware. On the effective date of the merger, each issued and outstanding share of Common Stock of Community Delaware will be converted into one share of Common Stock of Community Texas, and each issued and outstanding share of Preferred Stock of Community Delaware will be converted into one share of Preferred Stock of Community Texas. Any stockholders who dissent from the merger will be entitled to receive cash for the value of their shares.

As previously mentioned, Community Texas will succeed to all properties of Community Delaware, and Community Texas will assume all liabilities of Community Delaware. Therefore, on the books of Community Texas, as of the effective date of the merger, the same amounts for assets and liabilities will be recorded as are recorded on the books of Community Delaware as of the same date.

As evidence that the proposed merger will be consistent with the public interest, the application contains the following:

> * * * It is desirable from corporate and operating standpoints to have the corporate domicile in Texas, where approximately 80% of applicant's plant is situated and where applicant receives approximately 85% of its gross revenues. Applicant's customers will not be adversely affected as to rates by the change of domicile. In the opinion of applicant its customers probably will prefer to have electric service rendered by a Texas rather than a Delaware corporation. * * *

The application states that the proposed merger is subject to authorization by the Public Service Commission of New Mexico.

Written notice of the application has been given to The New Mexico Public Service Commission, The Texas Railroad Commission, and to the governers of those States. Notice of the application was also published in the Federal Register on March 28, 1963 (28 F.R. 3065), stating that any person desiring to be heard or to make any protest with reference to said application should, on or before the 15th day of April, 1963, file petitions or protests with the Federal Power Commission, Washington 25, D.C. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Community Delaware, a Delaware Corporation, is a public utility within the meaning of Section 201 of the Federal Power Act, subject to the jurisdiction

of the Commission as heretofore determined and set forth in the Commission's order issued May 17, 1961, *Community Public Service Company*, 25 FPC 970.

(2) Community Texas, the Texas corporation, on the effective date of the proposed merger, as described above, will own and operate facilities for the transmission of electric energy which is generated in Texas and consumed in New Mexico and which is generated in Oklahoma and consumed in Texas, all of which facilities are in addition to, and do not include, facilities used for the generation of electric energy or facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electricity consumed wholly by the transmitter. Community Texas will be, therefore, a public utility within the meaning of that term as used in Section 201 of the Federal Power Act.

(3) By the proposed transactions, as described above, Community Delaware will dispose of the whole of its facilities subject to the jurisdiction of the Commission, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(4) The proposed disposition of facilities, as recited above, upon the terms and conditions set forth in the application and subject to the provisions of this order, will be consistent with the public interest as expressed in Section 203 of the Federal Power Act for the reasons stated above.

The Commission orders:

(A) The proposed disposition by Community Delaware of the whole of its facilities subject to the jurisdiction of the Commission, as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application, subject to the provisions of this order.

(B) Community Texas and Community Delaware shall record the proposed transactions and the facilities and properties described above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transactions herein authorized and approved are consummated within 90 days from the date of issuance of this order.

(D) This authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

COOS-CURRY ELECTRIC COOPERATIVE, INC., PROJECT NO. 2319

ORDER ISSUING PRELIMINARY PERMIT

(Issued April 24, 1963)

Application was filed on August 3, 1962 by Coos-Curry Electric Cooperative, Inc. (Applicant), of Coquille, Oregon, for a preliminary permit under Section 4(f) of the Federal Power Act (Act) for proposed Project No. 2319, known as the Buzzard's Roost Development, to be located on the Illinois River in Jose-

phine and Curry Counties, Oregon, and affecting lands of the United States within the Siskiyou National Forest.

Among other project works, the proposed project would include an underground powerhouse containing two turbine-generating units, each rated at 100,000 kilowatts. The energy to be generated by the project is to be used by Applicant in its own system and the excess will be delivered to either Bonneville Power Administration or to the Northern California System, comprising principally private utilities.

Applicant requests a preliminary permit for a period of 36 months. It appears appropriate, however, that the period of the permit should be 24 months as hereinafter provided.

The Secretary of the Army and the Chief of Engineers, in commenting on the application, recommended, for inclusion in any preliminary permit issued for the proposed project, a special provision that the water at the mouth of the Illinois River be of sufficient volume and satisfactory quality for fish migration on the Rogue River past its confluence with the Illinois River in order to avoid interference with the fulfillment of the objects of the Corps of Engineers' authorized headwater projects on the Rogue River.

The Department of the Interior, in commenting on the application, stated that adequate provision should be made in any preliminary permit issued for the project for the protection of fish and wildlife values and the mineral resources in the area involved, and that in the event a preliminary permit is granted, the permittee should consult with the University of Oregon, Department of Anthropology concerning the probable cost of necessary archeological surveys and salvage.

Although the Forest Service, Department of Agriculture, was invited to comment on the application, no comments have been received to date.

No construction is authorized under a preliminary permit. Such a permit gives the permittee, during the period of the permit, the right of priority of application for license while the permittee undertakes the necessary studies and examinations required by Section 9 of the Federal Power Act in order to determine the economic feasibility of the proposed project, the means of securing the necessary financial arrangements for construction, the market for power, and all other information necessary for inclusion in an application for license, should one be applied for under the permit. The permit hereinafter issued will be subject to conditions that the Permittee shall consult and cooperate in certain respects with specified State and Federal agencies during the period of the permit.

By our order issued November 21, 1962, we dismissed a petition to intervene in this proceeding filed by the State of Oregon, wherein we found, among other things, that the questions raised by the Petitioner were not in issue upon an application for preliminary permit. Informal protests have been received from several conservation organizations and given appropriate consideration.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Oregon.

(2) Public notice of the application has been given as required by the Act.

(3) The proposed project will affect lands of the United States, but will not affect any Government dam, and no reason is apparent at this time for development of this proposed project by the United States.

The Commission orders:

(A) This preliminary permit is hereby issued to Coos-Curry Electric Cooperative, Inc. (hereinafter referred to as the Permittee), for a period of 24

months, effective as of April 1, 1963, for the sole purpose of maintaining priority of application for license for Project No. 2319, to be located on the Illinois River in Josephine and Curry Counties, Oregon, and affecting lands of the United States within the Siskiyou National Forest, subject to the terms and conditions of the Act, which is incorporated by reference as a part of this permit, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) The proposed project will consist of: a rock-filled dam about 560 feet high with crest at elevation 710 feet, located on Illinois River about 4.5 miles upstream from the confluence of the Illinois and Rogue Rivers; a reservoir with total storage capacity of 915,000 acre-feet at elevation 700 feet and about 680,000 acre-feet of usable storage with 200 feet of reservoir drawdown; a spillway controlled by a radial gate to be located in the left abutment; intake structure; pressure tunnel; penstock; and an underground powerhouse located in the right abutment containing two turbine-generating units, each rated at 100,000 kilowatts; a re-regulating dam located about 3.5 miles downstream with anadromous fish facilities; and appurtenant facilities.

(C) This permit is also subject to the terms and conditions set forth in Form P–1, entitled "Terms and Conditions of Preliminary Permit" (16 FPC 1303–1305), which terms and conditions (designated as Articles 1 through 8) are attached hereto and made a part hereof; and further subject to the following special conditions set forth herein as additional articles:

Article 9. The Permittee shall submit at the close of each six month period, from the effective date of the preliminary permit, to the Regional Engineer, Federal Power Commission, San Francisco, having supervision over the project, or to such other officer as the Commission may designate, accurate statements of the work accomplished during the period, and of the work contemplated under the preliminary permit for the insuing period.

Article 10. The Permittee shall, during the period of the project planning, consult with and cooperate with the Oregon Fish and Game Commissions, the U.S. Fish and Wildlife Service, the U.S. Forest Service and Corps of Engineers, in order that due consideration may be given to the interests of these agencies in the preservation of the fish and wildlife resources of the area which may be affected by the proposed project.

Article 11. The Permittee shall, prior to undertaking any investigative work under this preliminary permit on National Forest lands, consult with the Regional Forester, United States Forest Service, Portland, Oregon, or his representative, as to reasonable requirements relative to operations, field surveys, and explorations, and shall cooperate with the United States Forest Service during the period of this permit to develop a plan for alleviation of damage to, and achieving maximum utilization of, national forest resources insofar as affected by the proposed project.

Article 12. The Permittee shall, during the period of the permit, cooperate with the Bureau of Mines in making a reconnaissance survey of the area affected by the proposed development to determine the extent of the mineral resources that might be affected by the construction of the project.

Article 13. The Permittee shall, during the period of this permit, consult with Dr. Luther S. Cressman, Department of Anthropology, University of Oregon, Eugene, Oregon, concerning the probable cost of necessary archeological surveys and salvage.

Article 14. The Permittee shall, for the purpose of assuring the cooperation required by the terms of the permit, designate a liaison officer to act for the Permittee in keeping the several agencies specified in this permit currently

informed, and such liaison officer shall communicate with such agencies within 60 days from the date of issuance of this permit.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this preliminary permit. In acknowledgment of the acceptance of this preliminary permit, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

W. H. HUNT, DOCKET NO. G-19930[1]

ORDER DENYING MOTION TO TERMINATE PROCEEDING

(Issued April 24, 1963)

W. H. Hunt (Hunt) on February 13, 1962, filed a motion requesting the Commission to terminate the proceeding in Docket No. G-19930 and to terminate the refund obligation with respect thereto. In that proceeding the Commission suspended and subsequently permitted to become effective subject to refund Hunt's proposed increased rate of 18.5 cents per Mcf at 15.025 psia, designated as Supplement Nos. 5 and 6 to Hunt's FPC Gas Rate Schedule No. 3, for sales of natural gas to United Gas Pipe Line Company (United) from the West Oretta Field, Beauregard Parish, Louisiana (South Louisiana).

In support of the motion, Hunt states that it was necessary to install certain compression and dehydration facilities, and that the cost of these facilities was in excess of the amount Hunt collected subject to refund in Docket No. G-19930. Hunt also states that the increased rate is less than the applicable area rate level for initial sales, as announced in the Commission's Statement of General Policy No. 61-1,[2] as amended.

Hunt's application for abandonment of the subject sale, under Section 7(b) of the Natural Gas Act, was granted by order issued March 12, 1963 in Docket No. CI62-1039, and the related rate schedule was canceled. Such action, however, was without prejudice to any further findings and orders which the Commission may make in Docket No. G-19930 and the refund obligation with respect thereto will remain in effect until discharged by further order.

As we explained in the Shamrock order,[3] it is our policy, with certain limited exceptions inapplicable here, not to determine the justness and reasonableness of producer rate increases under Section 4(e) of the Act on an individual cost of service basis. Instead, we have decided to utilize the area rate approach for such purpose. There is thus no justification for terminating this proceeding, involving a rate in excess of the applicable area price level for increased rates as set forth in the Statement of General Policy No. 61-1, as amended, without refund obliga-

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[1] The proceeding in Docket No. G-19930 has been consolidated with the Southern Louisiana area rate proceedings in Docket No. AR61-2, *et al.*, by order issued May 10, 1961, 25 FPC 942.

[2] Statement of General Policy No. 61-1, issued September 28, 1960, 24 FPC 818 (18 CFR, Chapter I, Part 2, Section 2.56).

[3] The Shamrock Oil and Gas Corporation, Docket No. G-14077, Order Denying Motion to Terminate Proceeding issued January 2, 1963, 29 FPC 3.

tion, based on Hunt's cost presentation. Moreover, it is irrelevant that Hunt has been permitted to abandon the instant sale, because Hunt's refund obligations under Section 4(e) remain in effect.

The Commission finds:

For the reasons hereinabove stated, Hunt's motion to terminate the proceeding in Docket No. G–19930 should be denied.

The Commission orders:

Hunt's motion to terminate the proceeding in Docket No. G–19930 is hereby denied.

Commissioners Morgan and Ross *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. G–16842; TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP60–94; LOWELL GAS COMPANY, DOCKET NO. CP61–9; TENNESSEE NATURAL GAS LINES, INC., DOCKET NO. CP61–27; CENTRAL ILLINOIS ELECTRIC AND GAS COMPANY, DOCKET NO. CP61–122; MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. CP62–116; ALLIED GAS COMPANY, DOCKET NO. CP62–132; ALABAMA–TENNESSEE NATURAL GAS COMPANY, DOCKET NO. CP62–133; VILLAGE OF PROVENCAL, LOUISIANA, DOCKET NO. CP62–152; CITY OF MARSHALL, ILLINOIS, DOCKET NO. CP62–187; CITY OF CASEY, ILLINOIS, DOCKET NO. CP62–188; CITY OF MARTINSVILLE, ILLINOIS, DOCKET NO. CP62–189; CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, DOCKET NO. CP62–168

ORDER SEVERING AND DISPOSING OF PROCEEDINGS INITIATED UNDER SECTION 7(A) OF THE ACT

(Issued April 24, 1963)

On January 15, 1962, February 26, 1962, and March 8, 1962, the Commission issued orders whereby the above-styled proceedings were consolidated for purposes of hearing. A hearing was held in connection with these consolidated proceedings and concluded on March 30, 1962. In the light of the numerous and complex issues raised in these proceedings, a final determination has not as yet been rendered in connection therewith.

Included in the above consolidation are several applicants who have submitted requests pursuant to Section 7(a) of the Natural Gas Act requesting that the Commission order either the Tennessee Gas Transmission Company (Tennessee) or its affiliate Midwestern Gas Transmission Company (Midwestern) to make physical attachment with their respective facilities and provide them with an allocation of natural gas.

The total maximum daily requirements of five of these applicants seeking an allocation of gas under section 7(a) of the Act is relatively small and the effect that the attachment of these customers will have on Tennessee's over-all gas requirements will be *de minimis.*[1]

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[1] The total maximum daily authorization requested by these 7(a) applicants amounts to 3,109 Mcf. Tennessee is seeking herein a design day delivery capacity of 2,785,000 Mcf over a presently existing capacity of 2,669,031 Mcf.

Before these applicants can undertake to make preparations to attach new customers they must await Commission approval of their respective applications. It is important that favorable action by the Commission be forthcoming early enough to enable these applicants to construct their facilities prior to the oncoming winter heating season or their projects may have to be put over for a considerable length of time.

In light of the fact that hearings have been held and concluded with respect to the above-styled proceedings and no objections have been raised in connection with certain of these proceedings which were instituted pursuant to Section 7(a) of the Act, the Commission is of the opinion that such proceedings should be severed from the above-styled consolidation in order to expedite their final determination. We are not taking action on the 7(a) applications filed by the City of Marshall, City of Casey, and City of Martinsville, Illinois, Docket Nos. CP62–187, CP62–188 and CP62–189, respectively, because there are presented in those proceedings issues which are not present in the proceedings we, by this order, are severing from the other consolidated proceedings.

The Commission finds:

(1) That the public convenience and necessity requires that the application of Lowell Gas Company, Docket No. CP61–9; Central Illinois Electric and Gas Co., Docket No. CP61–122; Allied Gas Company, Docket No. CP62–132; The Village of Provencal, Louisiana, Docket No. CP62–152; and Central Illinois Public Service Company, Docket No. CP62–168 be severed from the above-styled consolidation.

(2) That the above-noted proposals are in good order and that the public convenience and necessity requires that the Commission act favorably with respect to these applications as expeditiously as possible.

The Commission orders:

(A) That Tennessee Gas Transmission Company is hereby directed to establish and maintain physical connection of its facilities with the facilities to be constructed by Lowell Gas Company in the Town of Wilmington, Massachusetts, as proposed in Lowell's application in Docket No. CP61–9; and to deliver and sell through such connection natural gas not to exceed a maximum daily volume of 1,756 Mcf.

(B) That Midwestern is hereby directed to establish and maintain physical connection of its facilities with the facilities of Central Illinois Electric and Gas Company to be constructed in the Village of Oakwood, Illinois, as proposed in Central Illinois Electric and Gas Company's application in Docket No. CP61–122; and to deliver and sell through such connection natural gas not to exceed a maximum daily volume of 365 Mcf.

(C) Tennessee is hereby directed to establish and maintain physical connection of its facilities with the facilities to be constructed by the Village of Provencal, Louisiana, as proposed in the application of such village in Docket No. CP62–152; and to deliver and sell through such connection natural gas not exceeding a maximum daily volume of 285 Mcf.

(D) Midwestern is hereby directed to establish and maintain physical connection of its facilities with the facilities of Allied Gas Company to be constructed in the Villages of Potomac, Rankin, and Cissna Park, Illinois, as proposed in Allied's application in Docket No. CP62–132; and to deliver and sell through such connection natural gas not to exceed a maximum daily volume of 528 Mcf.

(E) Midwestern is hereby directed to establish and maintain physical connection of its facilities with facilities to be constructed by Central Illinois Public

Service Company, for service to Vermilion, Illinois, as proposed in Central Illinois Public Service Company's application in Docket No. CP62-168 and to deliver and sell through such connection natural gas not to exceed a maximum daily volume of 175 Mcf.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

GULF OIL CORPORATION, ET AL. DOCKET NO. G-9520, ET AL.[1]

ORDER CONDITIONALLY APPROVING RATE SETTLEMENT PROPOSAL, TERMINATING PROCEEDINGS AND PRESCRIBING REFUNDS

(Issued April 25, 1963)

There is now before us for consideration a Petition for Approval of Settlement Proposal and Termination of Proceedings filed on February 7, 1963, by Gulf Oil Corporation (Gulf) encompassing the rates for 134 of Gulf's currently effective gas rate schedules.[2]

Comments have been filed by many parties to these proceedings, all of which have been given consideration.

In summary, the settlement proposal provides:

(1) Settlement rates, including tax reimbursement, are equal to or less than the Commission's applicable area ceilings, with the exceptions hereinafter discussed;

(2) Four initial rates, presently permanently certificated at levels above the Commission's applicable area ceilings, will be reduced to levels below such ceilings;

(3) Gulf waives the right to file for contractually authorized increased rates until April 1, 1965, except as provided in paragraph 6 below, and excepting further that with respect to Gulf's Rate Schedules Nos. 74 and 161 there is a moratorium on all increased rate filings until November 1, 1967;

(4) Amendment of Gulf's Rate Schedule Nos. 23, 24, 28, 41 and 114 to eliminate any favored nation, price redetermination of periodic price escalation clauses contained therein;

(5) Refunds, with interest at the applicable rate, under each rate schedule where collection was made subject to refund, of the difference between the revenues actually received and those which would have been received at the settlement rate, in each instance, commencing with December 1, 1961, to the date of the issuance of this order;

(6) Retention by Gulf of the right to file for any increased rates, if contractually authorized, up to the applicable area-rate levels determined through area hearings or by amendment of the Commission's Statement of General Policy No. 61-1, except as to Rate Schedule Nos. 23, 24, 28, 41 and 114.

With respect to refunds, the December 1, 1961 commencement date is based upon Gulf's revenue-cost relationship for recent years as found by the parties to these proceedings utilizing cost-of-service studies. Such studies revealed that during the latter part of 1961 increased sales and higher initial rates started to equalize Gulf's revenue-cost relationship, based on the settlement rates, and that about that time its jurisdictional revenues began to exceed its jurisdictional

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[1] The additional dockets involved herein are set forth in Appendices A, B and C hereto.

[2] Dockets excluded from the Settlement Proposal are set forth in Appendix D hereto.

costs. In view of that, and all the terms of the Settlement Proposal, as hereinafter conditioned, it is appropriate that refunds should be computed for sales made on and after December 1, 1961 to and including the date of issuance of this order, as provided in the Settlement Proposal.

The proposed exceptions to the applicable area ceilings all concern sales to United Gas Pipe Line Company (United Gas) :[3] two in Mississippi, and one sale in South Louisiana. One of the Mississippi sales has such unusual circumstances surrounding the initial contract as to make the increased rate ceiling inapplicable. The other Mississippi sale and the sale in South Louisiana were renegotiated by Gulf and United Gas at the same time, along with several other contracts, under such circumstances as to cause us to permit settlement at a rate in excess of applicable increased rate ceilings.

The first is a sale of gas from the Pistol Ridge Field, Mississippi.[4] On April 6, 1954, Gulf and United Gas entered into a contract with an initial price of 20¢ per Mcf for a twenty year period. However, Gulf agreed to an interim price of 15¢ per Mcf for an initial period of seven months to allow United Gas to recoup a portion of its expense of constructing a gathering system into the field. During such seven month period the Supreme Court issued its opinion in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U. S. 672, and when Gulf subsequently filed for the agreed upon 20¢ rate it was suspended by order of th e Commission, *Gulf Refining Company*, Docket No. G–8516 (order issued February 25, 1955). The rate agreed upon by the parties is below the applicable area initial ceiling. We have considered all of the circumstances surrounding this sale and find them to be similar to others where we have in such circumstances regarded the increased rate to be in the nature of the initial rate, *Bel Oil Corporation, et al.*, Docket No. G–4505, *et al.*, 28 FPC 1006 (order issued December 12, 1962). Therefore, we find the settlement rate of 20¢ per Mcf to be proper, and approve the same.

The second and third exceptions are sales from the Baxterville Field, Mississippi, and the Hayes Field, South Louisiana, respectively.[5] The contracts under which these sales were initially made by Gulf to United Gas were relatively short-term contracts which were to terminate at about the same time, along with other sales contracts between Gulf and United Gas. The contracts were renegotiated, along with the others, by Gulf and United Gas as a unit, and were so considered by the parties to the settlement conferences. As a result of such renegotiation Gulf added additional reserves for these sales and others considered in the unit. While renegotiated rates were above the increased rate ceilings, the settlement rates of 17¢ are below the initial rate ceilings. Consideration of all of the circumstances surrounding these sales, and the others renegotiated therewith, causes us to believe them to be similar to others where we have considered such a unique situation to warrant exceptions to the applicable area ceilings, *Shell Oil Company, et al.*, Docket No. G–9446, *et al.*, 28 FPC 257 (order issued August 1, 1962). Therefore, we find the settlement rate of 17¢ per Mcf for each of these sales to be proper, and approve the same.

Gulf proposes to omit from the settlement the rates for thirteen sales of gas presently being made by it in South Louisiana under temporary authority from this Commission. Seven of such sales are being made under refund conditions attached to said temporary certificates. All of said certificate proceedings are now consolidated with the proceedings in *Union Texas Petroleum*, et al., Docket

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[3] United Gas representatives attended and participated in the settlement conferences herein.

[4] Gulf's FPC Gas Rate Schedule No. 77.

[5] Gulf's FPC Gas Rate Schedules Nos. 74 and 161 respectively.

No. G–13221, *et al.*, wherein we propose to determine the in-line prices for the sales of natural gas in interstate commerce from the South Louisiana area involved therein.

Also excluded from the settlement agreement are sales presently being made under unconditional temporary authorizations in Texas Railroad Commission District No. 3 under Gulf's FPC Gas Rate Schedule Nos. 181 and 234 at rates of 20¢ and 17.5¢, respectively. The contracts for these sales were made prior to September 28, 1960, the date of issuance of our Statement of General Policy No. 61–1.

Included in the settlement are two permanently certificated sales in Texas Railroad Commission District No. 4 under Gulf's FPC Gas Rate Schedule Nos. 157 and 158 at rates of 16.5¢ per Mcf, and one permanently certificated sale in Texas Railroad Commission District No. 3 under Gulf's FPC Gas Rate Schedule No. 159 at a rate of 17.5¢ per Mcf. All of the contracts for these sales were made prior to September 28, 1960.

We believe it inappropriate in any general rate settlement either by approval as a part of the settlement agreement, or by exclusion therefrom, to permit the continued collection of rates in excess of the "in-line" rates determined for an area, after hearing, or the "guide-line" initial rates set forth in our Statement of General Policy. Accordingly, where the "in-line" rate has been determined we shall require reduction of rates to the "in-line" price.[6] Where the "in-line" price has not been determined and unconditioned temporary certificates have been issued, we shall require reduction of the rates to the "guide-line" rates set forth in our Statement of General Policy with refunds from the date of the order to the rate determined after an appropriate hearing.

Pursuant to the above, we shall condition our approval of this settlement proposal so as to require Gulf to reduce its rates under its Rate Schedule Nos. 170, 175, 184, 199, and 208 effective as of the date of issuance of this order to 21.25¢ per Mcf at 15.025 psia, and for it to agree that the rates under such rate schedule, along with the rate charged under its Rate Schedule No. 188, shall be subject to final determination in the *Union Texas* proceedings.[7] If by final order in said proceeding a lower rate is established than that provided for herein under such schedules, Gulf shall make refunds from the date of this order of the difference between the rates provided for herein and the rate ordered in the *Union Texas* proceeding. The refund requirements imposed as a condition of this settlement order shall not be construed to affect or limit the positions of the parties in the *Union Texas* proceeding with respect to refund obligation under temporary authorizations.

We shall likewise condition our approval of this settlement proposal so as to require Gulf to reduce its rates under its Rate Schedule Nos. 157 and 158 to 15¢ per Mcf and under its Rate Schedule Nos. 159, 181 and 234 to 16¢ per Mcf, in accordance with our determination of the "in-line" prices for these areas in our Opinion No. 362, *Skelly Oil Company, et al.*, 28 FPC 401, issued August 30, 1962 and Opinion No. 383, *Texas Seaboard Inc., et al.*, 29 FPC 593, issued March 27, 1963.

We shall exclude from the settlement Gulf's FPC Gas Rate Schedule Nos. 83, 180 and 182 since these rates are by contract related to those of the producer

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[6] We note that the settlement rate under Gulf's Rates Schedule No. 147 is 18.25¢ per Mcf and is consistent with our determinations in *Ohio Oil Company, et al.*, 27 FPC 551, issued March 21, 1962, affirmed in *Atlantic Refining Company* v. *FPC*, 316 F. 2d 677, No. 17166, decided March 21, 1963. In effect, the 18.25¢ rate corrects an inadvertent error which resulted in the issuance of a certificate for this sale at an initial price in excess of the applicable guide-line ceiling.

[7] See Appendix C attached hereto.

purchasers from Gulf, the purchasers' rates also being subject to suspension proceedings.

The proposed settlement rate of 14.1344¢ per Mcf under Gulf's Rate Schedule No. 102 exceeds our increased rate ceiling of 14¢ per Mcf and apparently was included at the proposed rate through inadvertence. We shall condition our approval so as to provide for a rate of 14¢ for this sale.

The Settlement Proposal also includes other rates (Rate Schedule Nos. 149, 174, 186, 237 and a sale to Mountain Fuel Supply Company for which no rate schedule has yet been filed)[8] for which issuance of related permanent certificates is pending, and service is being rendered under temporary authorizations. We propose to set such proceedings along with those in Docket Nos. G–20383 and CI60–412 for abridged hearing in accordance with Section 7 of the Natural Gas Act indicating that the settlement rates, as provided for and conditioned herein, shall be the initial price.

The foregoing has discussed all of the major comments and objections filed by American Louisiana Pipe Line Company, Long Island Lighting Company, Philadelphia Electric Company and the Public Service Commission of New York. Additionally we note that United Gas Improvement Company, Public Service Electric and Gas Company, Southern Natural Gas Company, Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, Colorado Interstate Gas Company and Champlin Oil & Refining Company, all of whom purchase gas either directly or indirectly from Gulf, filed comments favoring the Settlement Proposal as filed. We believe the instant Settlement Proposal, as herein modified, and in other particulars not specifically noted or set forth herein, meets the criteria previously set forth in other of our recent orders,[9] and accordingly we find it to be in the public interest and should be approved as hereinafter provided.

On September 24, 1962, a decision was issued by the presiding examiner in Docket No. G–9520, *et al.*, regarding Gulf's rates for sales of natural gas in interstate commerce. Without passing on the decision, we find that the public interest will best be served by approving the settlement agreement as herein modified. The examiner's decision accordingly becomes moot.

Our action herein should not be construed, nor may it be, as constituting approval of any future rate increase, if any, that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate proceedings, involving Gulf's rates and rate schedules.

The Commission finds:

(1) The proposed settlement of the subject proceedings on the basis described herein, as more fully set forth in the Settlement Agreement filed on February 7, 1963, as herein modified, is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that it be conditionally approved and conditionally made effective subject to the modifications hereinafter ordered.

(2) Good cause exists for approving the settlement rates, for terminating certain proceedings and providing for refunds.

The Commission orders:

(A) The settlement of these proceedings on the basis of the Settlement Agreement, filed February 7, 1963, as herein modified, is approved and made effective subject to the following terms and conditions.

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[8] See Appendix B attached hereto.

[9] See *Amerada Petroleum Corporation*, Docket No. G–9385, *et al.*, 29 FPC 204 (Order issued February 1, 1963), and the orders cited therein.

(B) The applicable settlement rates set out in Appendices A, B and C are approved and shall be effective as of the date of issuance of this order.

(C) The pending certificate proceedings indicated in Appendix B hereto shall not be terminated on the basis of the approval of the Settlement Agreement, but shall be determined after hearing in accordance with Section 7 of the Natural Gas Act.

(D) Gulf shall, over the signature of a responsible officer, file with the Commission, within 30 days from the date of the issuance of this order, an original and one copy of its acceptance or rejection of the terms and conditions of this order, including specifically the requirement for possible future refunds under its FPC Gas Rate Schedule Nos. 170, 175, 181, 184, 188, 199, 208 and 234.

(E) Within 90 days from the date of this order, Gulf shall make such filings under its rate schedules as are required to make effective the terms of the Settlement Agreement, as modified herein.

(F) Within 90 days from the date of this order, Gulf shall (1) refund, with interest as specified in each docket computed to the date of actual refund, the difference between the rates collected subject to refund, on and after December 1, 1961 and the related settlement rates to the date of this order; and (2) report to the Commission, in writing, the amount of refunds made to each of its purchasers, showing separately the amount of principal and interest so paid, and the bases used for such determination, together with releases from its purchasers showing receipt of the refunds in conformity with the Settlement Agreement as modified and approved herein.

(G) Upon full compliance by Gulf with all the terms and provisions of this order the Section 4(e) proceedings listed in Appendix A hereof and the Section 5(a) proceeding in Docket No. G–17813 shall terminate.

(H) This order is without prejudice to any findings or orders which have been, or may be, made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Gulf, the Commission staff, or any affected party hereto, in any proceedings now pending, or hereafter instituted by or against Gulf or any other companies, person or parties affected by this order.

Commissioner Morgan *not participating.*

APPENDIX A

GULF OIL CORPORATION, DOCKET NO. G-9520, ET AL.

Rate schedule number	Area and field	Purchaser	Docket number		Last firm rate [a]	Rate in effect [a]	Settlement rate [a]
			Certificate	Sec. 4(e) Rate increase			
	KANSAS						
44	Nichols	Michigan Wisconsin Pipe Line Co	G-9991	RI61-464	*15.075	16.00	15.00
45	Rhodes	Cities Service Gas Co	G-10148	G-20338	*12.00	13.00	12.00
52	Singley	Panhandle Eastern Pipe Line Co	G-10818	RI62-114	*16.08	17.00	16.00
53	Rhodes	Cities Service Gas Co	G-10848	G-20338	*12.00	13.00	12.00
54	Haviland	Panhandle Eastern Pipe Line Co	G-10918	RI62-114	*15.075	16.00	15.00
70	Nichols	Michigan Wisconsin Pipe Line Co	G-12348	RI61-464	*15.075	16.00	15.00
117	Hugoton	Northern Natural Gas Co	G-4143		11.00	11.00	11.00
137	North Medicine Lodge	Cities Service Gas Co	G-15002	G-20338	*12.00	13.00	12.00
145	Hugoton	Kansas-Nebraska Natural Gas Co	G-6841		*11.00	11.00	11.00
189	Hugoton	Colorado Interstate Gas	G-6844-47	RI60-421	*11.00	12.50	11.00
218	Palmer	Cities Service Gas Co	CI61-1555		*13.00	13.00	13.00
	COLORADO						
176	Otis	Kansas-Nebraska Natural Gas Co	G-20025		*14.00	14.00	14.0 at psi 16.4 ..do.
183	Bijou	do	G-20502		*12.00	12.00	12.00
204	Twin Mills	do	CI61-449		*12.00	12.00	12.00 at psi 16.4 ..do.
206	White	do	CI61-574		*14.00	14.00	14.00 at psi 16.4 ..do.
	WYOMING						
57	Big Piney	El Paso Natural Gas Co	G-11589	RI62-459 [b]	*15.00	14.00	15.00 at psi 15.025 do.
• 211	Big Horn	Montana-Dakota Utilities Co	G-2585 CI61-977		11.65	11.65	11.65 at psi 15.025 do.
223	Patrick Draw	Colorado Interstate Gas Co	CI62-47	RI63-259 [c]	*15.00	15.00	15.00
	NORTHWEST NEW MEXICO						
38	Blanco	El Paso Natural Gas Co	G-8563		12.00	12.00	12.00
47	South Blanco	do	G-10295		11.00	11.00	11.00
150	Bisti	do	G-17019		13.00	13.00	13.00
190	Gallegos Gallup	do	CI60-492		*12.00	12.00	12.00
202	Ballard	do	CI61-197		*12.00	12.00	12.00

	OKLAHOMA (OTHER)						
31	Fox	Lone Star Gas Co	G-6840		[e][a]5.00	[a]5.00	[a]5.00
50	Coffee Creek	Cities Service Gas Co	G-10683	G-14410	[a]10.00	11.00	11.00
94	Witcher-Munger	Champlin Oil & Refining Co	G-12782		[a]7.00	7.00	7.00
99	South Gibbon	Cities Service Gas Co	G-13129	G-20508	[a][f]12.00	[f]13.00	[f]12.00
129	East Victor	Jernigan & Morgan Transmission Co	G-12696	RI63-232 [g]	9.00	9.00	9.00
148	West Cement	Natural Gas Pipe Line Co. of America	G-16761		[f][i]15.00	[f][i]15.00	[f][i]15.00
166	Witcher	Champion Oil & Refining Co	G-18643		[a][f]7.00	[f]7.00	[f]7.00
169	North Waterloo	Cities Service Gas Co	G-19012	RI63-239 [i]	[a]11.00	11.00	11.00
177	Knox	Lone Star Gas Co	G-18004		[a]16.80	16.80	16.80
191	Southwest Wakita	Cities Service Gas Co	C160-558		[a][f]12.00	[f]13.00	[f]13.00
216	East Durant	Lone Star Gas Co	C161-1441		[a]15.00	15.00	15.00
222	Ringwood	Oklahoma Natural Gas Gathering Corp	C161-1711		[a]11.00	11.00	11.00
226	Northeast Waynoka	Cities Service Gas Co	C162-322		[a][f]13.00	[f]13.00	[f]13.00
230	South Marlow	Arkansas Louisiana Gas Co	C162-469		[a]15.00	15.00	15.00
	OKLAHOMA PANHANDLE						
46	Camrick, Southeast	Natural Gas Pipe Line Co. of America	G-10300	G-12955 RI60-319	[a]16.00	16.80	16.00
51	Forgan	Panhandle Eastern Pipe Line Co	G-10788	RI62-4	[a]15.00	16.00	15.00
66	Camrick, Southeast	Natural Gas Pipe Line Co. of America	G-11764	G-12956 RI60-17 RI61-334 [j]	[a]16.00	16.80	16.00
68	Northwest Eva	Panhandle Eastern Pipe Line Co	G-12064	RI62-436 [k]	[a][l]15.00	[l]15.00	[l]15.00
71	Camrick, Southeast	Natural Gas Pipe Line Co. of America	G-12475	G-14262 RI60-17 RI61-334 [j]	[a]16.20	16.80	16.20
95	Camrick	Kansas-Nebraska Natural Gas Co	G-12864	G-13841 G-20210 RI61-169	[a]16.00	16.80	16.00
96	Southwest Camp Creek	Colorado Interstate Gas Co	G-13004	RI63-61 [m]	[a][b]15.00	[b]15.00	[b]15.00
98	Laverne	do	G-11174	RI63-48 [n]	[a][b]15.00	[b]15.00	[b]15.00
100	Greenough, South	Panhandle Eastern Pipe Line Co	G-13208		[a]15.00	15.00	15.00
133	South Glenwood	Northern Natural Gas Co	G-14485	RI62-514 [o]	[a][b]15.00	[b]15.00	[b]15.00
141	Northwest Dower	do	G-15344	RI61-59 RI62-514 [p]	[a]15.50	16.50	15.50
155	South Forgan	Panhandle Eastern Pipe Line Co	G-18158		[a]16.00	16.00	16.00
167	South Forgan	do	G-18976		[a]16.00	16.00	16.00
168	Laverne	Michigan Wisconsin Pipe Line Co	G-18977		[a]17.00	17.00	[q]17.00
171	Camrick	Panhandle Eastern Pipe Line Co	G-19162	RI60-184	[a]16.40	16.60	16.40
200	Forgan	do	C161-12		[a]16.00	16.00	16.00

See footnotes at end of table.

APPENDIX A—Continued

Rate schedule number	Area and field	Purchaser	Docket number		Last firm rate [a]	Rate in effect [a]	Settlement rate [a]
			Certificate	Sec. 4(e) Rate increase			
	TEXAS PANHANDLE RRC DISTRICT 10						
11	West Panhandle	Phillips Petroleum Co	G-8155	G-13772	[r][m]10.00	[r]11.00	[r]11.00
14	Carson	do	G-7152		[s]3.57	3.57	3.57
43	Quinduno	Natural Gas Pipe Line Co. of America	G-9928	RI61-537	[s]12.00	13.00	12.00
49	North Hansford	Northern Natural Gas Co	G-10629	RI62-60	[s]15.50	16.50	15.50
123	do	do	G-10684	RI62-60	[s]15.50	16.50	15.50
126	West Panhandle	Henderson Trust No. 2	G-11090		8.00	8.00	8.00
127	East Panhandle	Phillips Petroleum Co	G-11910		4.2431	4.2431	4.2431
128	do	do	G-11898		4.2431	4.2431	4.2431
142	North Hutchinson	Northern Natural Gas Co	G-15466		[s]16.50	16.50	16.50
151	West Panhandle	Phillips Petroleum Co	G-17454		[s][r]8.00	[r]8.00	[r]8.00
	NORTH CENTRAL TEXAS RRC DISTRICT 9						
130	Boonesville Bend	Natural Gas Pipe Line Co. of America	G-4282	RI61-311	[s][t]13.25	[t]14.25	[t]14.50
	EAST TEXAS RRC DISTRICT 6						
22	Woodlawn	Mississippi River Fuel Corp	G-7137	G-12315 RI61-439	13.6296	14.6392	14.00
26	North Lansing	Arkansas Louisiana Gas Co	G-7141		[u]12.5541	[u]12.5541	[u]12.5541
102	Woodlawn	Mississippi River Fuel Corp	G-4163	RI62-221	14.1344	14.6392	14.0
103	North Lansing	Arkansas Louisiana Gas Co	G-4150		[u]12.5541	[u]12.5541	[u]12.5541
104	Willow Spring	do	G-4162		11.7438	11.7438	11.7438
105	North Lansing	do	G-4161		[u]12.5541	[u]12.5541	[u]12.5541
106	do	do	G-4152		[u]12.5541	[u]12.5541	[u]12.5541
107	Carthage	Tennessee Gas Transmission	G-4157	RI161-449	12.62	14.4248	14.00
109	North Lansing	Arkansas Louisiana Gas Co	G-4153		[u]12.5541	[u]12.5541	[u]12.5541
110	Carthage	Texas Gas Transmission Corp	G-4151		11.6288	11.6288	11.6288
112	North Lansing	Arkansas Louisiana Gas Co	G-4159		[u]12.5541	[u]12.5541	[u]12.5541
113	do	do	G-4156		[u]12.5541	[u]12.5541	[u]12.5541
115	Carthage	United Gas Pipe Line Co	G-4155		8.4784	8.4784	8.4784
164	John C. Robbins	Texas Eastern Transmission Corp	G-18478		13.40	13.40	13.40
217	Manziel	Lone Star Gas Co	CI61-1544		[s]14.49	14.49	14.49

	TEXAS GULF COAST RRC DISTRICT 4						
23	Mustang Island	United Gas Pipe Line Co	G-7144	G-13518	*12.66	14.80	* 15.00
30	San Salvador	Trunkline Gas Co	G-8852		13.948	13.948	aa 13.948
157	East Corpus Christi Bay	Florida Gas Transmission Co	G-10128	RI62-514 ee	*16.50	16.50	15.0
158	East Mustang Island	do	G-10127	RI62-514 ee	*16.50	16.50	15.0
221	East Mathis	Coastal States Gas Production Co	CI61-1691	RI62-36	*10.0960	12.1172	12.1172
	TEXAS GULF RRC DISTRICT 3						
21	North Stowell	Texas Gas Corp	G-7149		*4.50	4.50	4.50
25	New Ulm	Tennessee Gas Transmission Co	G-7140	G-17290	*13.2782	15.9502	bb 14.00
41	Big Hill	Texas Gas Pipe Line Corp	G-9872	RI61-259	14.1344	16.50	* 15.00
97	Hinkle	Trunkline Gas Co	G-13047		10.096	10.096	10.096
114	No. Louise	Tennessee Gas Transmission Co	G-2682	G-17290	*13.4975	16.1695	* 15.00
159	Lockridge	Florida Gas Transmission Co	G-10129	RI62-514 dd	*17.50	17.50	16.0
172	Fostoria Wilcox	United Gas Pipe Line Co	G-19144		*15.192	15.192	15.192
234	Chenango and Bluelake, Brazoria, Texas.	Coastal Transmission Corp	CI60-412	RI62-515	17.50	17.50	16.0
	TEXAS GULF COAST RRC DISTRICT 2						
24	Placedo	Tennessee Gas Transmission Co	G-7145	G-17290	11.0282	15.3333	*15.00
28	Heyser	do	G-7143	G-17290	11.0282	15.3333	*15.00
160	Keeran and East Placedo	United Gas Pipe Line Co	G-7146	RI62-436 ee	14.7125	14.7125	14.7125
162	Number McFaddin	do	G-7147	RI62-436 ee	14.7125	14.7125	14.7125
	TEXAS GULF COAST RRC DISTRICT 1						
178	Dilworth Dome	Transcontinental Gas Pipe Line Corp	G-20130		*14.189	14.189	14.189
	MISSISSIPPI						
74	Baxterville, Gwinville and Soso	United Gas Pipe Line Co	G-7177	G-18107	11.9787	22.883	17.00
77	Pistol Ridge	do	G-7168	G-8516	*15.00	24.00	20.00
				G-18772			
				G-20198			
92	do	do	G-10827	G-20198	*20.125	24.00	20.00
134	do	do	G-14741	G-20199	*20.00	24.00	20.00
179	Cranfield	Southern Natural Gas Co	G-17760		*22.872	22.872	21.25

See footnotes at end of table.

APPENDIX A—Continued

Rate schedule number	Area and field	Purchaser	Docket number		Last firm rate [a]	Rate in effect [a]	Settlement rate [a]
			Certificate	Sec. 4(e) Rate increase			
	NORTH LOUISIANA						
76	Athens	Arkansas Louisiana Gas Co	G-7174		13.87	13.87	13.87
78	Jeems Bayou	do	G-7173		[*]8.198	8.198	8.198
81	Haynesville	do	G-7175		13.0293	13.0293	13.0293
82	do	do	G-7176		13.4783	13.4783	13.4783
86	Athens	do	G-8448		13.87	13.87	13.87
147	Ada	United Gas Pipe Line Co	G-16745		[*]20.25	20.25	18.25
153	North Dubberly	Texas Gas Transmission Corp	G-17857		[*]18.25	18.25	18.25
203	Calhoun	do	CI61-310		[*]18.75	18.75	18.75
	SOUTH LOUISIANA						
69	Manila Village	Southern Natural Gas Co	G-12154		[*]19.75	19.75	19.75
79	South Bell City	Texas Gas Transmission Corp	G-7171	G-11847	11.8717	18.75	[**]15.75
80	Holmwood	Tennessee Gas Transmission Corp	G-7169	G-16696 RI60-243	10.7264	22.8333	15.75
84	Welsh	Texas Gas Transmission Corp	G-7172	G-17885 RI60-392 [hh]	10.497	16.25	15.75
87	Bully Camp	Tennessee Gas Transmission Co	G-10165	G-19865 [hh]	[*]18.50	23.0917	18.50
88	Timbalier Bay	do	G-10164	G-19865 [hh]	[*]18.50	23.0917	18.50
89	Dixon Bay	do	G-10605	G-19865 [hh]	[*]18.50	23.0917	18.50
91	West Little Chenier	American Louisiana Pipe Line Co	G-10400	RI62-385 [ii]	19.75	19.75	19.75
93	South Bell City	Texas Gas Transmission Corp	G-10946	RI62-202 [hh]	[*]18.75	19.75	18.75
124	Southeast Houma	United Fuel Gas Co	G-11012	G-16730 G-19911 [hh] RI61-170 [hh] RI62-120 [hh]	18.70	20.30	18.70
[jj]125	Northeast Rayne	do	G-11013	G-16730 G-19911 [hh] RI61-170 [hh] RI62-120 [hhkk]	18.70	19.90	18.70
136	Ridge	Unites Gas Pipe Line Co	G-12215		[*]22.25	22.25	20.25
139	Black Bay, East, Black Bay, West Black Bay, and North Black Bay	Southern Natural Gas Co	G-13447		[*]22.00	22.00	20.25
152	Grand Lake	Texas Gas Transmission Corp	G-17766	RI62-203 [hh]	[*]18.75	19.75	18.75
[ll]161	Hayes	United Gas Pipe Line Co	G-7166	G-18669 [hh]	14.6142	22.80	17.00
[mm]201	Abbeville	do	G-7167	RI61-40 [hh] RI62-85 [hh]	10.80	22.25	15.75

*Initial Rate.

a Unless otherwise indicated, all rates are expressed in cents per Mcf at a pressure base of 14.65 psia, except in Louisiana, Colorado, New Mexico and Mississippi, where the pressure base is 15.025 psia, unless otherwise indicated. All rates include applicable tax reimbursement.

b Increase to 16¢ per Mcf suspended in Docket No. RI62-459. Not placed in effect.

c R.S. 211 supersedes Gulf's R.S. 1 and Warren Petroleum's R.S. 48.

d Increase to 16¢ per Mcf suspended in Docket No. RI63-259. Not placed in effect.

e Price shown is after 1¢ per Mcf deduction for compression by Buyer.

f Price shown includes 0.75¢ per Mcf deduction by buyer for dehydration.

f-1 Price shown excludes Btu adjustment, the collection of which Btu adjustment is waived for the moratorium period.

g Increase to 10¢ per Mcf suspended in Docket No. RI63-232. Not placed in effect.

h Price shown excludes Btu adjustment to be retained, except for the moratorium period total price including Btu adjustment shall not exceed 17¢ per Mcf at 14.65 psi.

i Increase to 12¢ per Mcf suspended in Docket No. RI63-239. Not placed in effect.

j Increase to 17¢ per Mcf suspended in Docket No. RI61-334. Not placed in effect.

k Increase to 16¢ per Mcf suspended in Docket No. RI62-436. Not placed in effect.

l Price shown includes 0.5¢ per Mcf deduction by ouyer for desulfurization where applicable.

m Increase to 16¢ per Mcf plus Btu adjustment suspended in Docket No. RI63-61. Not placed in effect.

n Increase to 16¢ per Mcf plus Btu adjustment suspended in Docket No. RI63-48. Not placed in effect.

o Increase to 16¢ per Mcf plus Btu adjustment suspended in Docket No. RI62-514. Not placed in effect.

p Increase to 17.5¢ per Mcf suspended in Docket No. RI62-514. Not placed in effect.

q Subject to Btu adjustment to be waived for the applicable moratorium period.

r Price includes 0.4466¢ per Mcf deduction for sour gas where applicable.

s Application to abandon pending.

t Rate in Effect of 14.25¢ per Mcf shown includes 0.25¢ per Mcf reimbursement to Seller (which is in turn paid plant processor) for dehydration but excludes Btu adjustment provided for in contract. Settlement price of 14.5¢ per Mcf includes, for applicable moratorium period, total amount to be received for base price, Btu adjustment and reimbursement to be received for dehydration.

u Price excludes 0.5¢ per Mcf received for liquids extracted, to be retained.

v Eliminated by condition.

w Eliminated by condition.

x Eliminated by condition.

y Increase to 12.9¢ per Mcf suspended in Docket No. RI63-148. Not placed in effect.

z Future increases by reason of "favored nations," price redetermination or fixed price escalations during remaining term of these existing contracts to be waived.

aa Settlement price of 13.9480¢ per Mcf includes 0.25¢ per Mcf reimbursement for dehydration.

bb Abandonment approved in Docket No. CI62-1173 by order issued 7-13-62 but suspension in Docket No. G-17290 not terminated.

cc Increase to 17.5¢ per Mcf suspended in Docket No. RI62-514. Not placed in effect.

dd Increase to 18.5¢ per Mcf suspended in Docket No. RI62-514. Not placed in effect.

ee Increase to 15.7825¢ per Mcf suspended in Docket No. RI62-436. Not placed in effect.

ff Eliminated by condition.

gg Settlement price includes 0.225¢ reimbursement for dehydration.

hh Section 4(e) rate increase proceeding presently consolidated in Southern Louisiana Area Rate Proceeding, Docket No. AR61-2, *et al.*

ii Increase to 22.25¢ per Mcf suspended in Docket No. RI62-385. Not placed in effect.

jj Application to abandon pending.

kk Rate increase to 20.3¢ per Mcf suspended in Docket No. RI62-120. Not placed in effect.

ll R.S. 161 is new contract which supersedes R.S. 85.

mm R.S. 201 is new contract which supersedes R.S. 75.

APPENDIX B

Pending Certificate Applications

Rate schedule number	Area, purchaser, field, county/parish, State	Date of contract	Docket number	Initial price [a]	Settlement price [a]
	KANSAS				
186	Panhandle Eastern Pipe Line Co., Boyer, Meade, Kans.	1-29-60	CI60-361	16.00	[a] 16.00
	WYOMING				
174	El Paso Natural Gas Co., Dry Piney Area, Sublette, Wyo.	10-10-56	G-19435	15.00	15.00
	Mountain Fuel Supply Co., State Line unit, Sweetwater, Wyo.	5-31-62	CI62-1515	15.00	15.00
	OKLAHOMA PANHANDLE				
237	Panhandle Eastern Pipe Line Co., Forgan, Beaver, Okla.	3- 5-62	CI62-1203	17.00	17.00
	UTAH				
149	El Paso Natural Gas Co., Aneth, San Juan, Utah.	11- 6-58	G-16949	20.00	[b] 17.70

[a] All rates include applicable tax reimbursement. Oklahoma and Kansas sales are at 14.65 psia. Remaining sales are at 15.025 psia.
[a] Btu adjustment to be eliminated.
[b] Price applicable to Utah acreage. Settlement price for gas produced and sold from additional acreage located in Montezuma County, Colorado, shown in contract amendment dated July 26, 1961 (Supp. No. 1 to Rate Schedule 149) shall be 15.0¢ per Mcf at contract pressure base.

Pending Certificate Applications

Rate schedule number	Area, purchaser, field, county/parish, State	Date of contract	Docket number	Initial price[a]	Settlement price[a]
	TEXAS-RAILROAD DISTRICT NO. 3				
181	Trunkline Gas Co., Sarah White, Galveston, Tex.	12- 7-59	G-20383	20.00	16.00
234	Coastal Transmission Corp., Chenango and Blue Lake, Brazoria, Tex.	2- 1-60	CI60-412	17.50	16.00

[a] Rates at 14.65 psia.

APPENDIX C

Gulf Oil Corporation

SOUTH LOUISIANA PENDING CERTIFICATE APPLICATIONS

Rate schedule number	Purchaser, field, county/parish, State	Date of contract	Docket number	Initial price[a]	Settlement price[a]
170	Tennessee Gas Transmission Co.: Lake Washington, Plaquemines, La.	6-26-59	G-19062 [a]	23.60	21.25
175	Southeast Pass, Plaquemines, La.	8-14-59	G-19467 [a]	23.60	21.25
184	Lower Mud Lake, Cameron, La.	12-21-59	CI60-54 [a]	22.8333	21.25
188	Southern Natural Gas Co., Felice Bayou, Plaquemines, La.	2-11-60	CI60-440 [a]	20.75	20.75
199	Trunkline Gas Co., Lake Misere, Cameron, La.	5-11-60	CI60-824 [a]	21.80	21.25
208	American Louisiana Pipe Line Co., Krotz Springs, St. Landry, La.	10-31-60	CI61-716 [a]	21.50	21.25

[a] All rates include applicable tax reimbursement.
[a] Certificate applications presently consolidated in the *Union Texas Petroleum, et al.* proceedings, Docket No. G-13221, *et al.*

APPENDIX D

Exclusion From The Settlement Agreement

1. All of the rate schedules involved in the Permian Basin Area proceeding.
2. Rate Schedule No. 198, Red Wash Field, Uintah County, Utah, recently certificated in Docket No. CI60-636, Opinion 359.
3. Rate Schedule Nos. 195 and 196, covering Texas and Oklahoma Panhandle properties certificated in Docket Nos. G-16139 and G-16218, Opinion 328, and subject to further Commission action in the reopened Transwestern Pipeline Company proceeding Docket No. G-14871, *et al.*
4. Sales of gas to Texas Eastern Gas Transmission Corporation under Rate Schedules Nos. 27, 40, 42, 67, 108 and 132. The related suspension proceedings were terminated by Commission order issued June 5, 1961 in Docket No. G-11444, *et al.*
5. Rate Schedule No. 214 (Docket No. CI60-43) covering a sale from Bastian Bay Field, Plaquemines Parish, Louisiana, presently before the Commission in Docket No. CP60-36, *et al.*
6. Rate Schedule No. 241 (Docket CI62-607) covering a Texas District No. 4 sale presently in the consolidated proceedings in *Amerada Petroleum Corporation et al.*, Docket No. CI62-1544, *et al.*
7. Rate Schedule No. 227 (Docket No. CI62-344) covering a sale from the Nena Lucia Field, Nolan County, Texas, the initial price for which is related to West Lake Natural Gasoline Company's resale rate to El Paso Natural Gas Company.
8. Rate Schedule Nos. 180 and 182 covering sales to H. L. Hunt from the East Texas area and Rate Schedule No. 83 covering a sale to Hassie Hunt Trust from the North Louisiana area. These sales are tied to the resale rates of the buyers who are also producers. Such rates of the buyers are involved in suspension proceedings.
9. Eight certificate applications covering sales from South Louisiana which are presently consolidated in the *Union Texas Petroleum, et al.* proceedings, Docket No. G-13221, *et al.*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

IOWA POWER AND LIGHT COMPANY, DOCKET NO. E-7081

ORDER AUTHORIZING THE ISSUANCE OF COMMON STOCK

(Issued April 26, 1963)

Iowa Power and Light Company (Applicant), incorporated under the laws of the State of Iowa and doing business in that State, with its principal place of business in Des Moines, Iowa, filed an application on February 8, 1963, as supplemented on April 17, 1963 for an order, pursuant to Section 204 of the Federal Power Act, authorizing the issuance and sale of up to 50,000 shares of Common Stock, par value $10 per share. Applicant requests that the proposed issuance and sale of Common Stock be exempted from the Commission's competitive bidding requirements pursuant to Section 34.2(k)(2)(ii) of the Commission's Regulations under the Federal Power Act.

The proposed issuance of Common Stock will be made pursuant to the terms of an Employee Stock Purchase Plan, effective June 1, 1963, which provides that eligible employees of Applicant who participate in the Plan may

save regularly by payroll deductions and use these savings four times each year to purchase shares of Applicant's Common Stock. The principal provisions of the plan are as follows:

The price of Common Stock to participating employees will be 90% of the price of the last reported trade effected on the New York Stock Exchange prior to the close of business on the Investment Date, but not less than $10 per share. The Investment Dates will be the last business days of February, May, August and November.

An employee may authorize payroll deductions in any even dollar amount or not less than $10 per month but not to exceed 10% of his regular base pay on the date the authorization is made. Each participating employee's authorized deduction will be credited each month to his individual account under the Plan. At the close of business on each Investment Date the amount credited to each employee's account will be applied to the purchase of the Applicant's Common Stock to the extent that such amount will purchase full shares.

Temporary, probationary and retired employees are not eligible, nor are directors unless they are also employees.

The Plan will be administered by the Applicant at its expense.

According to the application, the Applicant believes that it will benefit from operation of the Plan through:

1. Increased employee interest in the successful operation of the Company through stock ownership.

2. Better employee understanding of the Company's overall operations and responsibilities to various groups, particularly its responsibility to investors to earn an adequate profit thereby enabling the Company to raise additional capital for continued growth.

3. Attraction of capable new employees to work for the Company and encouragement of present employees to remain with the Company.

4. Promotion of employee financial stability which benefits both the employee and the Company.

5. Provision of a source of equity funds in modest amounts.

The total proceeds from the 50,000 shares of Common Stock will be determined by the number of shares taken under the plan and by the purchase price per share. The current price is about $55 per share. On the basis of the present price, the entire 50,000 shares sold at 90 percent of market would produce net proceeds of about $2,450,000.

The net proceeds arising out of the sale of the Common shares to employees under the plan will be added to the Applicant's treasury funds and ultimately used for new construction.

Written notice of the application has been given to the Iowa Commerce Commission and to the Governor of that State. Notice of the application also was published in the Federal Register on February 28, 1963 (28 F.R. 1895), stating that any person desiring to be heard or to make protest with reference to the application should file a petition or protest on or before March 15, 1963, with the Federal Power Commission, Washington 25, D.C. No protest, petition or request to be heard in opposition to the granting of application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued May 31, 1961, *Iowa Power and Light Company* Docket No. E-6974 (25 FPC 1063).

(2) The proposed issuance and sale of up to 50,000 shares of Common Stock, par value $10.00 per share, pursuant to the provisions of the above described

Employee Stock Purchase Plan, will constitute an issuance of securities within the purview of Section 204 of the Federal Power Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act; and the proposed issuance of Common Stock, as described above, is therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) Under the circumstances of this case, sufficient cause has been shown for exempting the proposed issuance and sale of Common Stock from the competitive bidding requirements of Section 34.1a (b) and (c) of the Commission's Regulations under the Federal Power Act.

(5) The proposed issuance and sale of Common Stock, as hereinafter authorized, will be for a lawful project within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

(6) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance and sale of Common Stock, upon the terms and conditions and for the purposes specified in the application, as described above, are hereby authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Common Stock are hereby exempted from the competitive bidding requirements of Section 34.1a (b) and (c) of the Commission's Regulations under the Federal Power Act.

(C) This authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever which may come before this Commission.

(D) Nothing in this order shall be construed to imply and guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

OPINION NO. 382-A

SHELL OIL COMPANY, SHELL OIL COMPANY (OPERATOR), ET AL., SHELL OIL COMPANY (OPERATOR), HUNT OIL COMPANY, N. B. HUNT, LAMAR HUNT, W. H. HUNT, H. L. HUNT, LYDA HUNT-MARGARET TRUSTS, LYDA HUNT-CAROLINE TRUSTS, LYDA HUNT-HERBERT TRUSTS, LYDA HUNT-BUNKER TRUSTS, LYDA HUNT-LAMAR TRUSTS, SECURE TRUSTS, CLAUDE E. AIKMAN, THE SUPERIOR OIL COMPANY, SUN OIL COMPANY, SUN OIL COMPANY (OPERATOR) ET AL., DOCKET NO. RI61-515

MEMORANDUM OPINION AND ORDER MODIFYING OPINION AND ORDER AND DENYING APPLICATIONS FOR REHEARING AND REQUESTS FOR STAY

(Issued April 26, 1963)

Syllabus

1. Opinion No. 382 does not hold that a triggering rate must be found to be just and reasonable, but only that it must have been authorized by basic contract. P. 855.

2. Commission *modifies* Opinion No. 382 and order; *denies* applications for rehearing and motions for stay. P. 856.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

On March 26, 1963, Shell Oil Company (Shell) filed with the Commission a motion to stay Ordering Paragraphs (C) and (D) of Opinion No. 382 and Order in this proceeding, issued on March 15, 1963, 29 FPC 498, until Opinion No. 382 and Order has been finally judicially affirmed. These paragraphs require Shell to refund certain amounts to El Paso Natural Gas Company (El Paso) and to report on the refunds.[1]

Among other things, our Opinion No. 382 and Order rejected proposed rate increase filings on the grounds that the favored-nation clauses basic to those filings had not been "triggered." In addition, in the case of Superior, its favored-nation increases were denied since allegedly triggered by increased rates paid to Hunt and Shell, which later increases were claimed to be triggered by a basic sale which we found not to have a triggering effect.

On March 28, 1963, Shell filed with the Commission an application for rehearing of the matters contained in Opinion No. 382 and Order. On April 1, 1963, the Superior Oil Company (Superior), on April 4, 1963, the Hunt interests (Hunt), and on April 5, 1963, the Sun Oil Company (Sun) filed with the Commission motions to stay Ordering Paragraphs (C) and (D). Hunt and Superior request that a stay be granted until Opinion No. 382 and Order has been finally affirmed by the Commission or on judicial review. Sun requests a stay until after final action on its application for rehearing herein and final disposition of any petition for judicial review of Opinion No. 382 and Order. Hunt, Sun, Superior, and Amerada Petroleum (Amerada), an intervener, have also filed motions for rehearing on April 11, April 12, and April 15 (Superior and Amerada), respectively.

The motions by Shell, Superior, Hunt, and Sun for a stay of Ordering Paragraphs (C) and (D) of Opinion No. 382 are not supported by a sufficient showing. The courts have suggested that a number of factors should be present before they will grant the extraordinary relief represented by a stay, and we think that a consideration of such factors is pertinent when a request for stay is addressed to us.[2] These factors are:

1. Has the petitioner made a strong showing that it is likely prevail on the merits of its appeal?

This is clearly not so here, where for all practical purposes the *Pure Oil* decision of this Commission, as subsequently affirmed by the 7th Circuit,[3] dis-

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[1] El Paso has filed an answer (received April 2, 1963), to the motion saying it has no objection to a stay in order to permit Shell to perfect its judicial appeal, and similar answers (received April 9, 1963) to the motions by Hunt and by Sun cited on the next page.

The State of California and the California PUC (California interveners) have filed answers received April 4, 1963, opposing the motions of Shell and Superior for a stay on the grounds that: (1) Shell and Superior have had notice since the Commission's *Pure Oil* decision of March 3, 1961 (25 FPC 383), to prepare for the eventuality of refunds here; (2) The customers and rate payers will be injured by further continuing the rates collected under the rejected favored-nation filings, and by allowing Shell and Superior to keep funds already paid under those filings; (3) Shell and Superior have shown no unusual circumstances as grounds for their motion to stay, Section 19(c) of the Natural Gas Act providing that a rehearing application shall not operate as a stay of the Commission's order unless specifically ordered by the Commission.

[2] *Virginia Petroleum Jobbers* v. *F.P.C.* (DC Cir., 1958), 259 F. 2d 921; *Tennessee Gas Transmission* v. *F.P.C.* (5th Cir., 1960), 283 F. 2d 729.

[3] *Pure Oil* v. *F.P.C.*, Opinion 341, 25 FPC 383, aff'd (7th Cir., 1962), 299 F. 2d 370.

poses of the instant case which involves the same transaction basic to the *Pure Oil* decision.

2. Has the petitioner shown that without such relief it will be irreparably injured?

There is no such showing here; in fact, in the dockets involved in this case it can be shown that granting or denying of the stay will not cause inconvenience, let alone injury.[4] The reason for this is that the increased rates as to which refunds have been ordered are "locked in"; that is, after this proposed rate increase was suspended by the Commission, the respondents in question filed for an additional rate increase which was also suspended. This means that the amount of the first refund has already been fixed and determined; and so even if the respondents should lose their administrative or judicial appeals, they will not have continued to collect additional amounts which will have to be refunded; and if they should win, no multiplicity of suits will be required to recover from their purchaser, El Paso; indeed, in all probability, no court litigation will be here required. Although interest will run on the substantial refunds due ($1,500,000), the respondents would have had in return the use of the money during that period.

3. Would the issuance of a stay substantially harm other interested parties?

The California interveners urge that the rates collected under the rejected filings will continue on into the future and may permit the retention of the funds already paid under rejected filings (or at least will present all the usual difficulties of insuring that the refund goes to the original customer). However, these rate increases are "locked in." Therefore, this particular objection does not appear significant here.

4. Where lies the public interest?[5]

Before this proceeding concludes, El Paso will have to make refunds in another proceeding currently pending before the Commission.[6] A stay here would limit these amounts from being passed on by El Paso to its customers as part of the same refunding process, thereby frustrating the economy of effort entailed in permitting all appropriate refunds to be made at a single time. No reason appears why the public interest in this economy of effort should be diluted by the granting of a stay having as little justification as the instant motions. We find no sound reason for further delaying proceedings which were not easy to justify in the first instance. The motions for a stay are denied.

None of the arguments advanced by Shell in its application for rehearing are novel. All have been previously considered by the Commission and rejected, either in Opinion No. 382 or in other orders entered in this proceeding. Shell's major contention is that after Shell tendered its original proposed rate increases in this case, which were protested by El Paso, Shell and El Paso renegotiated their contracts and agreed on new rates which were slightly lower than the proposed favored-nation filings at issue, but higher than their prior effective rates.

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[4] Shell urges a stay to avoid complications, confusion, and possible loss; Superior and Hunt urge hardship from the resulting accounting problems and possible financial loss due to refunding and then having to collect again if they prevail; Sun cited this last reason in urging that it would suffer irreparable injury if the stay were not granted, arguing that the Commission has granted stays where reductions in rates are ordered for past "locked-in" periods, apparently—they argued—because there is no provision in the Natural Gas Act for recovering refunds for such periods citing the Order of April 26, 1962, in *Texaco, Inc., et al.*, Docket No. G–15546, *et al.*, 27 FPC 847.

[5] These four questions are taken from the *Virginia Petroleum* case cited above at footnote 2; 259 F. 2d 921 at 925.

[6] *El Paso* v. *F.P.C.*, Opinion No. 366, October 19, 1962, 28 FPC 688.

Shell urges that these amended agreements "completely supersede" its favored-nation filings herein as of January 1, 1960. In effect, Shell is suggesting that its amended filings be permitted to have a retroactive effect.

However, under Section 4 of the Natural Gas Act, it is provided that notices, changes in rates, etc., shall go into effect only upon 30-days notice after filing, unless the Commission otherwise provides. Section 4 also provides that rates may be suspended for no longer than 5 months beyond the time when they otherwise would go into effect. To permit filings to have retroactive effect would raise serious questions in view of these provisions. For example, if the rates in question were to be made effective as of January 1, 1960, should the 5-month period be seen as having already run by June 1, 1960? The Commission did not, in fact, give them retroactive effect here. Substantial justification should appear before a filing is permitted to have retroactive effect, and, as the discussion below reveals, no such reason appears here.

Despite the language in Shell's application, we do not interpret Shell as contending that the amended agreements constitute a novation. Nor does the record support such an interpretation. Furthermore, similar problems of retroactivity would still be presented by a novation.

Shell's other major argument is that by "accepting" Shell's original filings herein, the Commission is now barred from rejecting them for lack of contractual support. This position has little merit and was fully disposed of in our Opinion No. 382. The other issues raised in Shell's application have been disposed of either in the exaimner's decision, in our Opinion No. 382, or both. Under the circumstances, we find no merit in the Shell application for rehearing, and it is hereby denied.

Amerada's application for rehearing, received April 15, 1963, contains no arguments which have not previously been considered and disposed of in the course of the examiner's decision or of Opinion No. 382.

Sun's application, received April 12, 1963, also consists primarily of arguments which have already been considered and disposed of. Sun's argument is that the amount of refund for the period January 1, 1960, to April 9, 1962 (the effective date of its renegotiated rates), should be based on Sun's renegotiated rates (which it states were filed in place of the favored-nation increases) rather than on its higher original rates. This in effect assumes that we should give retroactive effect to the filing of the proposed renegotiated rates. We have already discussed this argument in general in connection with Shell's application for rehearing, and it is rejected on similar grounds.

Sun further urges that our action herein is inconsistent with the examiner's initial decision in Docket No. G–8288, *et al.*, issued March 11, 1963, which involves a general investigation of Sun's prices, including Docket No. G–18184 re increases resulting from the claimed activation of Sun's favored-nation clauses in the contracts with El Paso involved herein. The issues in the general investigation of Sun's prices primarily turn on the justness and reasonableness of its rates, a question specifically excluded from the present case, which centered on the "triggering" of favored-nation increases. It having been determined that no contractual basis existed for Sun's filing in Docket No. G–18184, it should be excluded from any rate determination in Sun's consolidated rate proceeding, Docket No. G–8288. In view of the above considerations, Sun's application for rehearing is hereby denied.

Hunt's application for rehearing was received April 11, 1963. Hunt urges that the Hunt increases at issue herein are based upon negotiated "firm-fixed" prices agreed to by El Paso before the increased rates here became effective. Therefore, Hunt urges that, as far as it is concerned, the issues involved are

unrelated to the *Pure Oil* decision. This contention, however, is fully disposed of in Opinion No. 382 at pages 504–505 and need not be again considered here. Although Hunt contends that its filings of the renegotiated rates are a "decrease" in rates which the Commission has no authority to suspend, they are in fact a "decrease" only in relationship to the favored-nation filings and are *an increase* with respect to Hunt's then effective rates. Hunt's other contentions in its application for rehearing also consist of the repetition of arguments which have been considered and rejected. Accordingly, Hunt's application for rehearing is denied.

Superior's application for rehearing, received April 15, 1963, likewise consists primarily of contentions which were previously considered and rejected. Superior's primary argument was that of its five proposed rate increases based on favored-nation clauses, only one was directly "triggered" by the West Texas-El Paso sale involved in the *Pure Oil* case. Superior argued that since the other favored-nation clauses were triggered by rate increases put into effect by Shell or Hunt, this supplied the necessary contractual consent, even though the Shell and Hunt increases in turn had been triggered by the West Texas purchase. This argument was carefully considered and rejected in Opinion No. 382.

Superior also reargues the qualitative comparison of the gas from its Eumont Field with that which El Paso purchased from West Texas and again contends that West Texas was really controlled by El Paso or was El Paso's agent for purposes of this transaction. These arguments too were considered by the examiner and rejected in his decision which was affirmed by Opinion No. 382. Superior and other applicants for rehearing also contend that the language and underlying intention behind the favored-nation clause in *Pure Oil* make the situation different than here. The examiner found no such critical differences nor did we in our opinion No. 382; and contrary to Superior's contention, Opinion No. 382 does not hold that a triggering rate must be found to be just and reasonable, but only that it must have been authorized by its basic contract. In view of the above, Superior's application for rehearing is also denied.

We do find it necessary, however, to make one change in Ordering Paragraph (C) of Opinion No. 382. Instead of providing that respondents "shall refund to El Paso with interest at the rate of 6 percent per annum", that paragraph should have provided that respondents "shall refund to El Paso with interest at the rate provided under the applicable order or notice making the increased rate effective subject to refund."[1] And, for clarity, as Shell points out, the phrase "Shell's proposed increases" in the parenthesis on page 500 of Opinion No. 382 should read, "certain of Shell's proposed increases."

The Commission further finds:

(1) The applications for rehearing filed herein by Shell, Amerada, Sun, Hunt, and Superior set forth no significant new facts or principles of law which were not fully considered by the Commission when it issued its Opinion No. 382 and Order or which, having now been considered, warrant any change in, modification of, or rehearing of such Opinion and Order, except as specified below.

(2) There is no contractual basis for Sun's filing in Docket No. G–18184 which is currently included in Sun's consolidated rate proceeding, Docket No. G–8288.

(3) There is no justification for, and the public interest would not be served by, granting a stay of Opinion No. 382 and Order.

The Commission orders:

(A) The applications for rehearing filed in the above entitled proceeding by

[1] Some of these orders had provided for interest at 7 percent rather than 6 percent.

Shell, Amerada, Sun, Hunt, and Superior are hereby denied, except as specified below.

(B) The phrase "with interest at the rate of 6 percent per annum" in Ordering Paragraph (C) of page 505 of our Opinion No. 382 and Order is hereby deleted, and in its place is hereby substituted the phrase "with interest at the rate provided under the applicable order or notice making the increased rate effective subject to refund."

(C) The phrase "Shell's proposed increases" on line 22 of page 500 of Opinion No. 382 and Order is hereby deleted, and in its place is hereby substituted "certain of Shell's proposed increases."

(D) Sun's filing in Docket No. G–18184 is rejected, and it is excluded from any rate determination in Sun's consolidated rate proceeding, Docket No. G–8288.

(E) The motions for stay of Opinion No. 382 and Order by Shell, Amerada, Sun, Hunt, and Superior are hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP63–201

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 29, 1963)

On January 14, 1963, Cities Service Gas Company (Applicant) filed in Docket No. CP63–201 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of metering and regulating equipment on an existing pipeline, and the sale of natural gas for resale, all as more fully represented in the application in this proceeding.

Applicant proposes to tap its existing Montana 12-inch pipeline in Labette County, Kansas, in order to sell gas to the Union Gas System, Inc. (Union) for resale and distribution in and about the City of McCune, Kansas. Union proposes to use this facility to supplement its existing local supply for the City of McCune, and states that its existing reserves are near depletion and the proposed new source is necessary to continue existing service. The total demands of the City of McCune for natural gas based on an estimated 3 year volume are as follows:

Estimated Volumes (Mcf @14.73 Psia)

Year	Peak day	Applicant's portion	Annual	Applicant's portion
1	290	87	28,950	8,700
2	300	106	29,250	10,300
3	310	135	29,885	13,060

Cities presently delivers gas to an electric generating plant located near the proposed delivery point to Union. Applicant states that should it ever cease to make deliveries to the electric plant it will abandon this lateral and also terminate the proposed service to Union which resells to the City of McCune. The fact that the Commission is authorizing the proposed service does not imply that it condones any future abandonment of service to Union for resale to the City

of McCune should the conditions set forth by Applicant in pages 2 and 3 of its application have reason to occur.

Cities Service estimates that the proposed facilities will cost $860 to be financed out of the company treasury.

Pursuant to due notice, a public hearing was held in Washington, D.C., on April 17, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30 (c) (1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in the First National Building, Oklahoma City 1, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof as well as the sale of natural gas by Applicant, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities as well as the sale of natural gas, both proposed by Applicant, are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to construct and operate certain natural gas facilities, and to sell natural gas for resale, as hereinbefore described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sale of natural gas shall commence as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within three months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP63-216

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 29, 1963)

On January 31, 1963, Cities Service Gas Company (Applicant) filed in Docket No. CP63-216 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of metering and regulating equipment on an existing transmission pipeline, and the sale of natural gas for resale, all as more fully represented in the application in this proceeding.

Applicant proposes to tap its existing Kansas-Hugoton 26-inch main gas pipeline and construct and install a meter setting with appurtenant regulator equipment in the Northwest corner of Section 33, Township 21 South, Range 1 East, Marion County, Kansas, and to sell natural gas to The Gas Service Company for resale in and about the City of Goessel, Kansas. Since the esimated total annual demands of the inhabitants of the City of Goessel are relatively small, the effect of these demands on Applicant's existing gas supplies will be negligible. Applicant estimates that the peak day and annual requirements of Goessel for the first three years of operation will be:

Year	Mcf of gas @ 14.73 Psia	
	Peak day	Annual
1	381	21,588
2	435	22,988
3	480	23,688

Applicant estimates that the proposed facilities will cost $3,520 to be financed out of the company treasury.

Pursuant to due notice, a public hearing was held in Washington, D.C., on April 18, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in the First National Building, Oklahoma City 1, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof as well as the sale of natural gas by Applicant, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities as well as the sale of natural gas, both proposed by Applicant, are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to construct and operate certain natural gas facilities, and to sell natural gas for resale, as hereinbefore described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sale of natural gas shall commence as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

VILLAGE OF DUPO, DOCKET NO. CP63-57

FINDINGS AND ORDER DIRECTING INCREASED SALE OF NATURAL GAS

(Issued April 30, 1963)

On September 7, 1962, the Village of Dupo, Illinois, (Applicant) filed in Docket No. CP63-57 an application pursuant to Section 7(a) of the Natural Gas Act for an order directing Mississippi River Fuel Corporation (Mississippi) to increase Applicant's stated demand from the present 675 Mcf of natural gas per day to 775 Mcf per day, all as more fully set forth in the application.

Applicant states that the additional gas is necessary to enable it to render unsatisfied requests for natural gas service and to enable it to meet its estimated future requirements.

The proposed increase of 100 Mcf in stated demand was reserved for Applicant by Commission Opinion No. 355 and order, issued April 18, 1962, in

Docket No. G–17567, *et al.*, 27 FPC 697. Said opinion and order provided that such increased contract demand shall become effective upon approval of a 7(a) application filed by Applicant within six months of the effective date of said opinion and order.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on March 12, 1963 (28 F.R. 2374). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Mississippi River Fuel Corporation, a Delaware corporation having its principal place of business in St. Louis, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of March 1, 1944, in Docket No. G–291 (4 FPC 535).

(2) Applicant, the Village of Dupo, is a municipal corporation incorporated under the laws of the State of Illinois and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in said Village.

(3) Applicant's filing here is in accordance with our dictates in Opinion No. 355.

The Commission orders:

(A) Mississippi River Fuel Corporation is hereby authorized and directed to commence delivery to Applicant of the increased stated demand heretofore referred to as having been specifically reserved for Applicant in our Opinion No. 355 and ordered issued April 18, 1962.

(B) Mississippi River Fuel Corporation shall report to the Commission in writing the date of commencement of the increased service to Applicant.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP62–257

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 30, 1963)

On January 10, 1963, Florida Gas Transmission Company (Applicant) filed an application to amend the Commission's order, issued June 22, 1962, 27 FPC 1367, in Docket No. CP62–257 to authorize the construction and operation of certain facilities to provide an additional delivery point for natural gas service to an existing customer, Cattle Marketers, Inc. (Marketers), all as more fully set forth in the application to amend.

The subject order authorized Applicant to construct and operate certain facilities and to deliver natural gas, on a direct sale preferred interruptible basis, to Marketers for use in the latters' hay-drying plant, Osceola County, Florida. Deliveries of natural gas to Marketers were limited to 275,000 Mcf per year.

Applicant proposes herein to construct and operate a tap, metering station and 0.2 miles of 2⅜-inch O.D. lateral pipeline off of its 20-inch mainline near Holopaw, Florida, in order to render service to Marketers' proposed new hay-drying plant, to be located approximately 5 miles from the plant presently being served

by Applicant. The proposed deliveries to the new plant will be a portion of Marketers' existing contract volume of gas.

Applicant and Marketers have entered into an agreement, dated December 20, 1962, amending the original agreement of March 22, 1962, in order to provide for the additional delivery point and the sale and delivery of gas for use in Marketers new plant.

The application shows the existing and proposed plants are estimated to use 280 Mcf and 325 Mcf of natural gas per day, respectively, for a total of 605 Mcf per day for both plants. The March 22, 1962, contract provides for the sale and delivery to Marketers of up to 275,000 Mcf of natural gas per year, or an average of approximately 764 Mcf per day. The amending agreement does not alter these annual or daily volumes.

Applicant states that the cost of the proposed facilities is estimated to be $12,000, which cost will be advanced by Marketers, subject to reimbursement by Applicant, without interest, at such time as revenues attributable to the proposed new service make the facilities economically feasible.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on March 21, 1963 (28 F.R. 2841). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued June 22, 1962, in Docket No. CP62-257 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued June 22, 1962, in Docket No. CP62-257 be and the same is hereby amended to authorize Applicant to construct and operate the proposed facilities to provide an additional delivery point to Cattle Marketers, Inc., all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

THE MANUFACTURERS LIGHT & HEAT COMPANY, DOCKET NO. CP63-37

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 30, 1963)

On August 6, 1962, The Manufacturers Light and Heat Company (Applicant) filed in Docket No. CP63-37 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a 2,200 horsepower compressor station to replace Applicant's existing 2,400 horsepower compressor station known as Carnegie Compressor Station, at the same location in the Grant District, Wetzel County, West Virginia, all as more fully set forth in the application.

Applicant proposes to replace the existing Carnegie Compressor Station with new facilities consisting of two 1,100 horsepower vertical reciprocating natural

gas engines, each driving reciprocating compressors, together with auxiliary equipment, piping, controls, and other necessary equipment for the operation of the station. The application states that although the existing Carnegie Compressor Station has adequate horsepower, it is not equipped to perform the required service because the compressors, piping, and other facilities are not designed to operate at the pressure necessary to meet Applicant's system requirements. Further, Applicant alleges that it is not practicable to modify substantially the existing equipment for the following reasons: (1) to modify such equipment is estimated to cost $915,000; (2) the fuel consumption factor of the existing engines after modification would be an estimated 12.7 cubic feet per brake horsepower hour as compared with an estimated factor of 7.8 cubic feet per brake horsepower hour for the proposed new engines; (3) the main engines and compressor units are approximately 21 years old and are no longer being manufactured, which situation makes it progressively more difficult to obtain repair and replacement parts.

The estimated total capital cost of the proposed facilities is $1,045,000 to be financed through the issuance and sale of securities to Applicant's parent company, The Columbia Gas System, Inc. Salvage value of the facilities to be replaced is estimated at $85,000, with credit to fixed capital of $317,714 and cost of retiring estimated at $10,000.

Pursuant to due notice, a public hearing was held in Washington, D. C., on April 18, 1963, respecting the matters involved in and the issues presented by the application herein. A Petition For Leave to Intervene was filed by Tennessee Gas Transmission Company in this proceeding on October 19, 1962, but was withdrawn by letter dated March 28, 1963. By order of the Commission, the letter was accepted for filing and the withdrawal effected on April 12, 1963. No other petitions to intervene or protests have been filed. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, The Manufacturers Light and Heat Company, with its principal place of business at 800 Union Trust Building, Pittsburgh 19, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction replacement and operation of facilities proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record

and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, The Manufacturers Light and Heat Company, to construct, replace and operate the natural gas facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MISSISSIPPI RIVER TRANSMISSION CORPORATION, DOCKET NO. CP61-274

FINDINGS AND ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 30, 1963)

On January 15, 1963, Mississippi River Transmission Corporation (Applicant) filed an application to amend further the Commission's order issued July 21, 1961, 26 FPC 182, in Docket No. CP61-274 to authorize the construction and operation of additional facilities and to extend to March 31, 1964, the time within which authorized facilities should be constructed and placed in actual operation, all as more fully set forth in the application.

The subject order authorized Applicant to construct and operate certain facilities in order to deliver natural gas to Storage Corporation (Storage) for purposes of testing the St. Jacob's storage field near St. Jacob, Illinois. The application indicates that migration of gas from the proposed storage formation into higher formations has been experienced, and that in an effort to further analyze, and perhaps isolate, the cause of the migration, Storage has advised Applicant that it desires to drill an additional injection well to the north of the existing wells. Therefore, Applicant proposes herein to construct and operate 17,000 feet of 4.5-inch O.D. line, together with necessary valves, fittings and appurtenances, and metering and dehydration equipment in order to inject gas by means of the new well.

Applicant states that all facilities heretofore authorized have been substantially completed, except for the 550-horsepower compressor unit and associated permanent metering, control and instrumentation equipment. Applicant does not now expect to undertake the installation of the compressor unit before the results of injecting gas through Storage's new well can be determined and analyzed.

Applicant states further that the drilling of the new well by Storage, the injection of gas by means of such well and the construction of the additional facilities referred to herein and proper analysis of the results of such injection may be expected to extend over a peroid of ten months or more. Therefore, Applicant requests the subject extension of time to March 31, 1964.

Due notice of the filing of the motion to amend and opportunity for hearing thereon has been given by publication in the Federal Register on March 13, 1963 (28 F.R. 2473). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued July 21, 1961, in Docket No. CP61-274, be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued July 21, 1961, in Docket No. CP61-274, be and the same is hereby further amended to authorize Applicant, Mississippi River Transmission Corporation, to construct and operate the proposed additional facilities and to extend the time within which to complete construction and place in operation facilities authorized in the subject docket to and including March 31, 1964, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-150

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 30, 1963)

On November 29, 1962, as supplemented on January 23, 1963, Northern Natural Gas Company (Applicant) filed in Docket No. CP63-150 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities in order to transport and deliver up to 6,000 Mcf per day of additional firm natural gas to Reserve Mining Company (Reserve) for use by the latter in processing low grade iron ore into taconite pellets at Reserve's plant located near Silver Bay, Minnesota, all as more fully set forth in the application, as supplemented.

Applicant proposes to construct and operate approximately 9.4 miles of 30-inch loop pipeline north of its Ventura, Iowa, compressor station. The estimated cost of these facilities is $1,012,700, which cost will be financed by cash on hand, reserve accruals and retained earnings.

Applicant states, that through its Peoples Division, it has been selling 12,000 Mcf of contract demand gas per day to Reserve under a contract, dated May 31, 1960, as amended. Applicant states further that Reserve is currently expanding its plant facilities and that its contract demand requirements will be increased as a consequence thereof.

Accordingly, on October 16, 1962, the original contract was further amended to provide that Applicant will supply additional contract demand of not less

than 4,000 Mcf per day nor more than 6,000 Mcf per day. The application indicates that Reserve's exact requirements can only be determined by testing the new facilities under actual operating conditions. Therefore, Applicant has agreed to the range of contract demand for a period of ninety days after initial delivery of the increased quantities of gas or until December 27, 1963, whichever is later. At the end of such period, Reserve will notify Applicant's Peoples Division of the precise volume of additional contract demand and such volume will then constitute the contract demand volume for the future.

Pursuant to due notice, a public hearing was held in Washington, D.C., on April 16, 1963, respecting the matters involved in and the issues presented by the application, as supplemented, herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities and to transport and deliver additional volumes of natural gas as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the gen-

eral terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided in paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward

NORTHERN STATES POWER COMPANY, PROJECT NO. 2056

ORDER FURTHER AMENDING LICENSE

(Issued April 30, 1963)

Application was filed on December 20, 1962, by Northern States Power Company, licensee for Project No. 2056, for further amendment of its license for the project, located on the Mississippi River in Minneapolis, Minnesota.

The licensee seeks amendment of Article 11 of the license so as to fix and specify therein the voltage and amount of energy to be furnished by the licensee to the United States for the operation of the Upper Lock at St. Anthony Falls and to fix and specify the voltage of the energy to be delivered by the licensee to the United States for the operation of the Lower Lock at St. Anthony Falls.

The Department of the Army has reported that revision of Article 11 as proposed in the application is satisfactory insofar as the interests of navigation are concerned.

According to the licensee, the Upper Lock at St. Anthony Falls is scheduled to go into operation on April 15, 1963, and the District Engineer, Corps of Engineers, had requested that the energy be made available on or about March 1, 1963, since the energy would then be required for testing purposes.

The Commission finds:

(1) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received.

(2) The license, further amended as hereinafter ordered, is not inconsistent with the public interest.

The Commission orders:

(A) The license for Project No. 2056 is hereby further amended, effective as of March 1, 1963, by revising Article 11 thereof to read as follows:

Article 11. (a) The Licensee shall furnish free of cost to the United States 60 cycle, 3-phase alternating current at 4,160 volts for the operation and maintenance of navigation facilities at the Lower Lock and Dam, St. Anthony Falls, to meet a demand not to exceed 375 kilowatts and an annual energy consumption not to exceed 480,000 kilowatt-hours; and (b) the licensee shall furnish free of cost to the United States 60-cycle, 3-phase alternating current at 13,800 volts for the operation and maintenance of navigational facilities at the Upper Lock, St.

Anthony Falls, to meet a demand not to exceed 300 kilowatts and an annual energy consumption not to exceed 370,000 kilowatt-hours.

(B) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP63-82

FINDINGS AND ORDER AMENDING ORDER ISSUING CERTIFICATE AND PUBLIC CONVENIENCE AND NECESSITY

(Issued April 30, 1963)

On February 8, 1963, 29 FPC 285, Transcontinental Gas Pipe Line Corporation (Transco) was authorized to construct and operate a sales meter station and appurtenant equipment in addition to a line tap, all for the purpose of transporting and supplying additional volumes of natural gas to Lynchburg Gas Company (Lynchburg) of Lynchburg, Virginia.

The Commission has reviewed the order and believes that some confusion may arise from a misinterpretation of paragraph (5) in the findings which reads as follows:

> (5) Until otherwise ordered by the Commission the volume of gas to be delivered by Applicant to Lynchburg Gas Company shall be limited to 100 Mcf of firm gas per day and 250 of interruptible gas per day.

This paragraph appears to impose a condition on Transco, limiting the deliveries at the additional point to be constructed pursuant to the authority granted in the instant certificate. Moreover, it implies that deliveries at the additional delivery point are to be in addition to Lynchburg's present allocation from Transco, whereas the application is clear that such deliveries will be provided from allocations heretofore authorized by the Commission.

The Commission finds:

The order of February 8, 1963, in Docket No. CP63-82 should be amended by deleting in its entirety paragraph (5) of the findings.

The Commission orders:

(A) The order of February 8, 1963, in Docket No. CP63-82 is amended by deleting therefrom in its entirety paragraph (5) of the findings.

(B) In all other respects the order of February 8, 1963, in Docket No. CP63-82, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CONTINENTAL OIL COMPANY, DOCKET NO. CI63-979

ORDER TO SHOW CAUSE

(Issued May 1, 1963)

Continental Oil Company, Houston 1, Texas, filed on February 1, 1963, a petition to the Federal Power Commission and a supporting brief requesting that the Commission issue an order directing United Gas Pipeline Company (United), Shreveport, Louisiana, to show cause why it should not be required to continue to take deliveries of gas produced by Continental in the Johnson Bayou field, Cameron Parish, Louisiana, under Continental's FPC Gas Rate Schedule 115 as supplemented, and order United to take such gas pending action on the order to show cause.

United filed on February 27, 1963, an answer and a brief in opposition to Continental's petition. Continental filed a reply brief on March 14, 1963.

The relevant facts on which the parties rely, as stated in their respective filings, are that Continental and United executed on January 22, 1953, a contract which provided for the sale by Continental and the purchase by United of gas produced from the Johnson Bayou field, Cameron Parish, Louisiana, at a price of 10.797¢ per Mcf, including 1.8¢ tax reimbursement. That contract was filed with the Commission as Continental's FPC Gas Rate Schedule No. 115 and the Commission issued to Continental, under Docket No. G-6949, a certificate of public convenience and necessity authorizing Continental to sell and deliver natural gas to United under the terms of the contract. The contract was for a primary term of 10 years and would automatically continue in effect thereafter for successive periods of one year each with the provision that either party might terminate the contract at the end of the primary term or any succeeding annual period by giving to the other party 90 days prior written notice.

By letter dated October 23, 1962, Continental notified United that it elected to terminate the contract as of January 31, 1963, the end of the primary term.

In November, 1962, Continental requested United to agree to a new contract covering the Johnson Bayou field gas for a term of 20 years at an increased price of 15.75¢ per Mcf, including 1.75¢ tax reimbursement, to become effective January 31, 1963. The parties did not reach agreement on the proposed new contract.

United informed Continental that it would actively support an application by Continental to the Federal Power Commission to abandon this service since United did not currently need this gas and, in the meantime, United would agree to continue buying Johnson Bayou field gas on a day-to-day basis at the existing contract price. The parties did not reach agreement on United's proposal.

On December 28, 1962, Continental filed Supplement No. 7 to its Gas Rate Schedule No. 115 providing for a unilateral rate increase from 10.797¢ to 15.75¢ per Mcf, including tax reimbursement, which the Commission accepted on January 25, 1963, over United's protest, to become effective January 31, 1963.

By letter dated January 28, 1963, United notified Continental that it would discontinue the receipt of gas from Continental in the Johnson Bayou field at 7:00 a.m. on January 31, 1963. United said that sales under the contract of January 22, 1953, wtih Continental were continued until Jauuary 31, 1963.

Continental's petition presents the question of whether the Natural Gas Act and the Commission's Rules and Regulations thereunder require United to apply

for and obtain the Commission's permission and approval before ceasing the operation of all or any portion of the facilities heretofore utilized to purchase from Continental natural gas produced in the Johnson Bayou field and whether the termination by United of its purchase of gas from Continental constitutes in whole or in part an abandonment of service. We have not heretofore decided a case in which this issue has been presented.

We find it necessary and appropriate in carrying out the provisions of the Natural Gas Act, therefore, that United show cause, as hereinafter ordered, why it should not file with the Commission an application for abandonment authorization pursuant to Section 7(b) of the Natural Gas Act and the Commission's Rules and Regulations thereunder.

Natural gas companies and state and municipal regulatory bodies having jurisdiction to regulate rates and charges for the sale of natural gas which desire to file briefs and participate otherwise in this proceeding are invited to intervene.

The Commission orders:

(A) United Gas Pipeline Company shall appear and show cause, if any there be, at the hearing directed in paragraph (B) hereof, why it should not be required to apply for and obtain the permission and approval of the Federal Power Commission before ceasing the operation of all or any portion of the facilities heretofore operated by United to purchase natural gas from Continental Oil Company from Johnson Bayou field, Cameron Parish, Louisiana.

(B) A public hearing on the question of whether or not United is required by the Natural Gas Act or the Commission's Rules and Regulations under the Act to apply for the Commission's permission and approval as aforesaid, will be held in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington 25, D.C., commencing June 3, 1963, at 10:00 a.m. EDT.

(C) United shall file with the Commission on or before May 21, 1963, an answer in writing, pursuant to Sections 1.9(c), 1.15 and 1.16 of the Commission's Rules of Practice and Procedure, in the nature of a brief stating, among other things, United's position on the subject of this order and also the points of law, arguments, and authorities on which it relies.

(D) Notices and petitions to intervene and protests may be filed with the Commission in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure on or before May 14, 1963. Interveners shall file with the Commission and serve on all parties on or before May 21, 1963, briefs setting forth their respective positions on the subject matter of this order and also the points of law, arguments, and authorities on which they, respectively, rely.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NOS. G–4769, G–12948, G–17929 AND RP60–3

ORDER DENYING PETITION FOR REHEARING

(Issued May 1, 1963)

On March 29, 1963, El Paso Natural Gas Company (El Paso), filed its Petition for Rehearing of Letter Order of March 22, 1963, 29 FPC 569. In that letter order we rejected El Paso's refund proposal in Docket No. G–4769 and directed El Paso

to file with the Commission on or before March 29, 1963[1] a statement showing distribution of refunds to its jurisdictional customers in that docket with interest at 6 percent, in accordance with the conclusions set forth in the letter order and consistent with the schedules attached thereto.

In our Opinion No. 366, issued October 19, 1962, 28 FPC 688, we determined the fair and reasonable rate of return for El Paso in the above-captioned dockets. By ordering paragraph (C), El Paso was directed to file, on or before January 15, 1963, a statement, subject to the Commission's approval, showing the distribution to its jurisdictional customers of appropriate amounts to be refunded in Docket No. G–4769, with interest at 6 percent, together with computation of the refunds and interest and the derivation thereof. That order also required El Paso to serve said statement and computations upon its customers, parties to the proceedings and interested State commissions. On January 15, 1963, El Paso filed its refund statement in which it proposed to refund a total amount of $35,144,486 to its jurisdictional customers. In our letter order of March 22, 1963, we rejected El Paso's refund proposal for the reason that it was based upon a method of distribution of Federal income taxes to functions inconsistent with the method used in the Commission's Opinion No. 326, 22 FPC 260, 286–287 in Docket No. G–4769. The schedules attached to our letter order indicate that a proper distribution of Federal income taxes to functions together with costs allocated pursuant to Opinion No. 326, results in refunds to jurisdictional customers of $764,998 greater in principal amount than that proposed by El Paso. As shown in Schedule 4 attached to the letter order, this figure results from El Paso's overstatement of the proper refund to jurisdictional customers served from its production facilities by $80,307 and an understatement of the required refund to jurisdictional customers served from transmission facilities by $845,305.[2]

El Paso, in addition to general allegations of error, contends: (1) the method of assignment of Federal income taxes to functions used in the Commission's letter order of March 22, 1963, is not supported by any evidence in the record and raises questions which have never before been raised and have never been briefed or argued; (2) the additional refunds have been imposed without notice or opportunity to be heard in violation of the due process clause, Section 4 of the Natural Gas Act and Sections 5, 7, 8 and 9 of the Administrative Procedure Act; (3) the letter order treats return and income taxes associated therewith inconsistently, and penalizes El Paso with respect to wellmouth investment by distorting costs among functions; (4) assignment of Federal income taxes to functions was not in issue in the proceedings in G–4769, which led to Opinion No. 326 and that opinion "did not and could not deal" with distribution of income tax expense to wellmouth investment because it allowed the company the producer tax benefits in lieu of return on wellmouth investment; (5) even if the method in the letter order was used in Opinion No. 326, the remand by the Fifth Circuit (281 F. 2d 567 at 574) presented a newly created issue which "necessarily required the reformulation of the calculations in respect of rates involving wellmouth rate base and cost of service"; (6) the presence of a cost allocation

[1] Extended to April 18, 1963 by Notice of the Secretary issued March 28, 1963.

[2] After determining the total Federal income tax allowance for the test period, it is necessary to assign that tax to the various functions such as wellmouth, other production, transmission, etc., in order to arrive (after determination of other costs in addition to taxes) at a total cost for each function prior to classifying costs as demand or commodity and allocating costs to jurisdictional or non-jurisdictional business.

issue in G–4769 "is conclusively proved by the very fact that there is now a difference of opinion between the Commission and El Paso on the subject"; (7) the Commission's unilateral determination of a method of distribution of income taxes to functions constitutes a prejudgment of issues presently pending before the Presiding Examiner.

The method of assignment of Federal income taxes to functions in Docket No. G–4769 as used in our letter order of March 22, 1963 (Schedule 1) is clearly reflected in Appendix C to Opinion No. 326, 22 FPC 260 at 286–287. On appeal of Opinion No. 326, the United States Court of Appeals for the Fifth Circuit remanded the case to the Commission for the sole purpose of determining a fair return on El Paso's wellmouth investment (281 F. 2d 567 at 574). Thus rate of return (and associated taxes) on El Paso's wellmouth properties was the only issue before the Commission in the remanded proceeding in Docket No. G–4769. The method of assigning Federal income taxes to functions was not appealed. We find no validity in El Paso's contention that the Fifth Circuit in remanding for determination of return on wellmouth properties also created new issues to be determined by the Commission. We stated at page 704 of Opinion No. 366:

> As for Docket No. G–4769 all issues except rate of return (and associated taxes) were finally determined with the decision of the Court of Appeals. Having determined rate of return, it is timely to compute the final refund and order it to be paid.

El Paso, in its refund proposal filed January 15, 1963, in purported compliance with Opinion No. 366, has unlawfully departed from the method of assignment of Federal income taxes to functions as used by the Commission in Opinion No. 326.

El Paso's claim that the method of assignment of Federal income taxes to functions used in our letter order is not supported by any evidence in the record and raises questions which have never before been raised, briefed or argued, is a collateral attack on Opinion No. 326 and as such is improper. El Paso cannot argue that it had no knowledge that its method was erroneous or that an additional principal refund is being imposed upon it without notice or opportunity to be heard. El Paso, in its Petition (p. 4), shows that it was well aware of the method the Commission employed in assigning Federal income taxes to functions in Opinion No. 326. Having failed to seek rehearing or court review of the matter then, El Paso cannot do so now.

The method of assigning Federal income taxes to functions described in our letter order and attached schedules conforms to that employed by the Commission in Opinion No. 326. The method employed by the Commission in that opinion which resulted in the assignment of Federal income taxes to functions on the basis of investment in each function with a zero tax assigned to the wellmouth functions is reflected in the Federal income tax figures shown in Appendix C (22 FPC 260 at 286–287) of the opinion. That opinion indicates (Appendix A, 22 FPC at 285) that income tax deductions applicable to wellmouth facilities amount to $14,269,201, which exceeded the return of $6,410,760[2] we allowed on wellmouth properties shown in Appendix C. As a consequence, no tax was

[2] The return on wellmouth was determined to be 8.61 percent as a result of allowing El Paso to retain the tax benefits related to intangible drilling costs and depletion allowances.

assignable to the wellmouth function. That Opinion No. 326 did in fact "deal" with this issue is evident from the appendices to that opinion and the schedules attached to the letter-order. Application of the Opinion No. 326 method of distribution of income taxes, but substituting in the cost of service the 6 percent return on wellmouth investment found fair and reasonable in Opinion No. 366, similarly results in a zero tax to the wellmouth function for the reason that the tax deductions applicable to wellmouth facilities exceed the return on wellmouth. El Paso, in its refund proposal assigns to the wellmouth function the difference between the tax deductions and the return applicable to that function. This results in an assignment of a "negative" amount of $10,621,448 to the wellmouth function and a greater tax to other functions (El Paso's Refund Proposal, Tab. 3, Schedule 6). El Paso's attempt to "reformulate" the calculations is contrary to Opinion No. 326, which does not assign any negative amounts to the wellmouth function.

El Paso's assertion that the distribution of Federal income taxes to functions used in our letter order is contrary to the statement in Opinion No. 366 that "we assume for purposes of this decision that El Paso's contentions on all other issues is correct" is equally without merit. As noted above and set forth at page 704 of that opinion, all issues in Docket No. G–4769 except rate of return were finally determined with the decision of the Court of Appeals (281 F. 2d 567). With reference to that docket, Opinion No. 366 went on to say (p. 704):

> Having determined rate of return, it is timely to compute the *final* refund and order it to be paid. [Emphasis supplied.]

Further, in our order issued December 7, 1962,[4] denying rehearing of Opinion No. 366, we stated (p. 957):

> In order to clarify our Opinion and Order No. 366, El Paso in computing rate in accordance with paragraph (A) or refunds in accordance with paragraph (C), *except* with respect to Docket No. G–4769, may employ the rate bases and other elements of cost of service evidence presented and received in evidence in these proceedings most favorable to it. [Emphasis supplied.]

It is thus clear that the Commission's letter order by requiring application of Opinion No. 326 to the refunds due in G–4769, does not prejudge any of the issues in the other dockets to which Opinion No. 366 is applicable. The issues in those dockets have been tried and are presently before the Presiding Examiner for decision. No issues with respect to Docket No. G–4769 are pending before the Presiding Examiner.

El Paso has shown no error in our adoption of the letter order of March 22, 1963, nor in the actions taken therein.

El Paso has set forth no facts or principles of law which we have not fully considered before in these proceedings or which upon present consideration warrant any change or modification of our determination in these matters. Accordingly, we find that El Paso's petition for rehearing should be denied.

The Commission orders:

The petition for rehearing filed by El Paso on March 29, 1963, is hereby denied.

Commissioner O'Connor and Commissioner Woodward *not participating.*

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[4] 28 FPC 952; corrected by Erratum Notice issued January 3, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SOUTH TEXAS NATURAL GAS GATHERING COMPANY (A TEXAS CORPORATION), DOCKET NOS. G–17050, G–18907; SOUTH TEXAS NATURAL GAS GATHERING COMPANY (A DELAWARE CORPORATION), DOCKET NOS. CP62–124, CP63–220[1]

ORDER AMENDING ORDERS ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND AMENDING TEMPORARY CERTIFICATE AUTHORIZATION

(Issued May 1, 1963)

On April 11, 1963, South Texas Natural Gas Gathering Company (South Texas) filed a petition for amendment of its outstanding certificate authorizations in Docket Nos. G–17050, G–18907 and CP62–124 to reflect a change in the locus of incorporation of South Texas from the State of Texas to the State of Delaware, all as more fully set forth in the aforesaid application.

The purpose of this proposal is to achieve greater corporate flexibility by transferring all of the rights, duties and obligations of South Texas (a Texas corporation) to South Texas (a Delaware corporation) pursuant to a Certificate of Incorporation filed with the Secretary of State of the State of Delaware on April 11, 1963. South Texas (a Texas corporation) will be dissolved upon completion of the incorporation in Delaware.

No change in name, corporate powers, officers and directors, operations or capitalization is involved.

Due notice of the subject petition was published in the Federal Register on April 19, 1963. No protest, petition to intervene or request for hearing on this matter has been received.

The Commission finds:

It is in the public interest and appropriate in carrying out the provisions of the Natural Gas Act to amend, as hereinafter ordered, the orders of the Commission issuing certificates of public convenience and necessity in Docket Nos. G–17050, G–18907, and CP62–124, and the temporary certificate authorization issued in Docket No. CP63–220.

The Commission orders:

(A) The orders of the Commission issuing certificates of public convenience and necessity to South Texas Natural Gas Gathering Company in Docket No. G–17050 (issued December 1, 1959, affirming and adopting the Presiding Examiner's Decision issued August 25, 1959); Docket No. G–18907 (accompanying Opinion Nos. 362 and 362–A, issued August 30, 1962, and December 18, 1962, respectively)[2]; and Docket No. CP62–124 (issued February 7, 1962); and the temporary certificate authorization issued to South Texas Natural Gas Gathering Company on April 1, 1963, in Docket No. CP63–220, be and the same are hereby amended by substituting the State of Delaware in lieu of the State of Texas as the place of incorporation of said Company.

(B) In all other respects, the aforesaid orders and temporary certificate authorization shall remain in full force and effect.

Commissioner Morgan *not participating.*

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[1] Docket No. CP63–220 covers a pending certificate application filed on February 4, 1963, for which temporary authorization was issued on April 1, 1963.

[2] Docket No. G–18907 is a part of the consolidated proceeding designated as Docket No. G–18638, *et al.*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TENNECO CORPORATION, DOCKET NOS. G–18980, AND CP60–6; UNION OIL COMPANY OF CALIFORNIA, DOCKET NOS. G–17010, G–19333, G–19682, G–20568, CI61–165, CI61–166, CI61–331, CI62–806, CI62–822 AND CI62–1120; UNION TEXAS PETROLEUM, ET AL, DOCKET NO. G–13221, ET AL.

ORDER REJECTING SETTLEMENT PROPOSALS AND CONSOLIDATING PROCEEDINGS

(Issued May 1, 1963)

By orders issued April 11, 1963, the above listed Tenneco Corporation (Tenneco) and Union Oil Company of California (Union Oil) cases were severed from the proceedings in Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, and hearings were fixed for April 23, 1963. At said hearings the Pennsylvania Public Utility Commission entered objection to the issuance of permanent certificates to Tenneco and Union Oil under the terms of the settlement proposals which were there entered into evidence. In addition Memphis Light, Gas and Water Division entered opposition to the approval of the settlement proposal in the Union Oil matters. The records in both proceedings were certified to us by the presiding examiner on April 23, 1963.

Both of the opposing parties indicated opposition to approval of the settlement proposals because of the lack of an evidentiary record in these proceedings upon which an "in-line" determination could be made and each further argued that the settlement would not be in the public interest. We shall make no decision upon the merits in these matters at this time. However, we are constrained to reject the settlement proposals in both matters, there being a lack of agreement among the parties to the proceedings.

These matters were severed from the consolidated proceedings, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, by our order of April 11, 1963, in view of the possibility of concluding them via the settlement route. Since this was not possible, and because the issues in these proceedings are the same as those in the Union Texas Petroleum proceeding, it appears desirable, for obvious administrative reasons, to order that these proceedings be once again consolidated with the Union Texas Petroleum proceeding for hearing and decision. We note that the presiding examiner in that proceeding has ordered that prepared testimony be presented by all parties thereto on or before April 30, 1963. If either Tenneco or Union Oil shall be unable to meet that dateline, it would be proper for them, in view of the unique circumstances in which they are involved, to request an extension of time of the Examiner.

The Commission orders:

(A) The request for approval of settlement agreement and issuance of permanent certificates of public convenience and necessity submitted by Tenneco Corporation in the above-captioned proceedings is hereby denied.

(B) The request for approval of settlement agreement and for issuance of conditioned permanent certificates of public convenience and necessity submitted by Union Oil of California in the above-captioned proceedings is denied.

(C) Those matters involving Tenneco Corporation in Docket Nos. G–18980 and CP60–6 are hereby consolidated for purposes of hearing and decision with the matters in Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

(D) Those matters involving Union Oil Company of California in Docket Nos. G–17010, G–19333, G–19682, G–20568, CI61–165, CI61–166, CI61–331, CI62–806,

CI62–822, and CI62–1120 are hereby consolidated for purposes of hearing and decision with the matters in Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TEXAS EASTERN TRANSMISSION CORPORATION, ET AL., DOCKET NO. G–12446, ET AL.

ORDER PERMITTING INTERVENTION, GRANTING APPLICATION FOR REHEARING AND DENYING STAY

(Issued May 1, 1963)

Applications to intervene and, in the alternative, for rehearing and stay have been filed by H. E. Dishman (Petitioner), with respect to our Opinion No. 378 and Order issued February 6, 1963, 29 FPC 249. In our opinion we found that we had jurisdiction over certain conveyances[1] of gas leasehold interests to Texas Eastern Transmission Corporation (Texas Eastern). Petitioner had made such conveyances.

Petitioner, an individual independent operator, on July 27, 1959 conveyed to Texas Eastern, represented by its subsidiary, the Louisiana Gas Corporation, certain gas interests in petroleum and other mineral leaseholds in the Rayne Field in Louisiana.

Petitioner seeks to intervene on the grounds that his interests, as conveyor, holder of securities and mortgage lienholder of gas leasehold interests now held by Texas Eastern in the Rayne Field, are affected by our Opinion No. 378 and his rights not adequately represented by existing parties. Petitioner declares that, relying on Commission and court opinions, he had no notice, and was without legal or factual reasons to be on notice, that the Commission would in these proceedings set aside the lease sale arrangement. As stated in our order of April 2, 1963, 29 FPC 692, we find no merit in the contention that the jurisdictional question on the leasehold acquisitions was not argued and at issue in the remanded proceedings. However, due to the complicated procedural situation, recognized in Opinion No. 378, and the fact that the issue was barely considered and given but passing mention in the earlier phase of these proceedings, and due to the lack of any treatment of petitioner as a party to the proceedings, we shall grant his petition to intervene.

Petitioner made his petition for rehearing in the alternative because of uncertainty as to his status as a party. This question becomes moot upon our grant of his petition to intervene. Before making further disposition of these proceedings, in order to give petitioner an opportunity to be heard on the issues he has raised, we shall grant his application for rehearing, but subject to procedures similar to those imposed in our order of April 2, 1963. In order to discover if a proper disposition of this matter requires a further evidentiary hearing, we shall require that petitioner file within 30 days of this order a pleading setting forth the nature of evidence he proposes to submit and what he intends to prove thereby on the issues raised by his petition for rehearing. These issues are: (1) whether we have jurisdiction over the gas leases involved, (2) or over

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[1] Conveyances made by Continental Oil Company, Sun Oil Company, General Crude Oil Company and M. H. Marr.

the transfer of these leaseholds, (3) whether we have jurisdiction to order Petitioner, or Continental, if it is still to be considered his representative herein, to file rate schedules and applications for certificates, and (4) whether we have jurisdiction to order Texas Eastern to put into effect a new arrangement for the supply of gas to it, in conformity with Opinion No. 378 and as required by paragraph (B) of the order.

The Commission further finds:

It is in the public interest that the applications for intervention and rehearing filed by H. E. Dishman be granted, subject to the procedures discussed above and set forth below in order paragraph (B). The application for stay pending judicial review is denied.

The Commission orders:

(A) The applications for intervention and rehearing filed by H. E. Dishman are hereby granted, but subject to the procedures discussed above and set forth below in paragraph (B).

(B) If H. E. Dishman desires a further evidentiary hearing, he shall notify the Commission within 30 days of the issuance of this order setting forth the nature of the evidence he proposes to introduce and what he intends to prove thereby. The evidence shall be confined to the following issues: (1) whether the Commission has jurisdiction over the gas leases involved in these proceedings, (2) whether the Commission has jurisdiction over the transfer of the gas leases involved herein, (3) whether the Commission has jurisdiction to order Petitioner, or Continental, if it is still to be considered his representative herein, to file rate schedules and applications for certificates, (4) whether we have jurisdiction to order Texas Eastern to put into effect a new arrangement for the supply of gas to it from the Rayne Field, in conformity with Opinion No. 378 and as required in paragraph (B) of the order, (5) whether the lease sale arrangement herein is in the public interest, and (6) whether it may be rescinded and another arrangement substituted.

(C) The petition for stay pending judicial review is denied.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNITED FUEL GAS COMPANY, DOCKET NO. G-20270

ORDER AUTHORIZING INTERIM INVESTMENT OF SUPPLIER REFUNDS

(Issued May 1, 1963)

On March 12, 1963 United Fuel Gas Company (United) filed a motion for authorization to make refunds in this rate proceeding as a flow through of refunds received from its supplier, Tennessee Gas Transmission Company (TGT), and certain other suppliers. United, moreover, requests that the Commission permit all such refunds to be passed on in the same manner as received from such suppliers and to treat them as though they were "final" and not subject to consideration with relation to the rate design and refund issues which are currently pending before the Presiding Examiner. In the alternative, United's motion requests that pending final decision in these proceedings, it be permitted to invest such refunds in short-term obligations of the United States Government and to pay net interest earned on such investment to its customers.

Answers in support of United's motion have been filed by two jurisdictional nonaffiliated customers, Baltimore Gas and Electric company (Baltimore Gas) and Dayton Power and Light Company (Dayton Power), and by the Pennsylvania Public Utility Commission. Answers in support were also filed by three affiliated companies (Columbia System), The Manufactures Light and Heat Company (Manufacturers), The Ohio Fuel Gas Company (Ohio Fuel), and The Ohio Valley Gas Company (Ohio Valley). Washington Gas Light Company (Washington Gas) filed an answer in opposition.[1]

In support of its motion, United asserts that unless the supplier refunds are passed on as though final and not subject to further consideration, as aforementioned, they would be made at the risk of possible detriment to either United or its customers if the plan of interim refunding were eventually found to deviate too widely from the rate design established by the Commission herein. It is possible that such detriment could result from over refunding to certain customers and by them to ultimate consumers if one component of United's rate design were established at a level higher than that contained in United's filed rates.

Washington Gas urges in its answer that such portion of all gas supplier refunds be passed on which can be refunded without prejudice to the position of any party on the rate design and refund issues. Although the parties hereto have made special provision for such "non-final" interim refunds if United seeks Commission approval, we are not convinced that we should compel such refunding.[2] It does not appear that a sufficiently large portion of such gas supplier refunds would be passed on to ultimate consumers at this time to justify imposing the additional burden of an interim refund upon United, its customers and state commissions. Due to the risk of exposure to over refunding pending determination of the issues herein, not only United, but also its distributor customers which make substantial interruptible sales would need to retain a portion of such interim refunds. Under the usual operation of the distributors' purchased gas rate adjustment clauses a significant portion of any such interim refunds would not be credited to bills of ultimate consumers before next winter. Meanwhile, it may be possible to reach final decision on the issues reserved herein and for United to make one distribution of all refunds.

Washington Gas also opposes United's alternative proposal that it be permitted to invest supplier refunds in government obligations, asserting that such investment would not provide an adequate interest rate. This objection does not appear to be well taken since, under the settlement agreement approved herein, United is not required to pass on supplier refunds until the rate design issues have been determined and it is specifically relieved of an obligation to pay interest on gas supplier refunds in addition to that received from such suppliers. Under United's proposal the invested amounts will earn some interest which will accrue to the benefit of the customers.

Washington Gas makes the additional objection that United's motion is not accompanied by a similar motion by its affiliated pipeline customer, Atlantic,

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[1] Previously, on January 18, 1963, United and its affiliated customer, Atlantic Seaboard Corporation (Atlantic), filed a joint proposal to make an immediate refund of an appropriate portion of the refunds received by United from TGT on December 24, 1962, requesting that a conference of all parties be called. On February 27, 1963 such conference was held and concluded without any agreement of all parties having been reached.

[2] "Second Supplement to Rate Stipulation and Agreement" (Appendix A to United's motion filed September 4, 1962) provided that although United may not be required to pass on supplier refunds, it may do so with Commission approval upon notice to all parties, provided refunds shall in no manner prejudice the substantive rights of the parties or be determinative of the issues reserved for decision herein.

which in turn sells gas to Washington Gas. Such a joint proposal was made by both pipeline companies before the above-mentioned unsuccessful conference.[2] It was not renewed. Pursuant to provisions in its own settlement agreement, in Docket No. G–20272, similar to those of United's agreement herein, Atlantic is not required to pass on supplier refunds until the rate design issues have been determined. Moreover, if no interim refunds are made by United at this time, there will be no need of Atlantic's filing such motion.

In view of the various contentions of the parties hereto and of the possibilities of prejudice to the substantive rights of the parties, we conclude that United's motion for permission to make refunds at this time should be denied, and that it should be permitted to invest any and all refunds as provided below, subject to our further order.

The Commission orders:

Pending decision by the Commission in these proceedings on the issues of the rate design and refunds prescribed by order issued herein on March 20, 1962, 27 FPC 538, United Fuel Gas Company shall invest the jurisdictional portion of all refunds received from gas suppliers applicable to the period subsequent to April 5, 1960, in short-term obligations of the United States Government, subject to the further order of the Commission, and the interest earned on such investment, including any increment earned on such refunds prior to the date of this order, shall be for the benefit of the ultimate recipients of said refunds.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNITED STATES DEPARTMENT OF THE INTERIOR, BONNEVILLE POWER ADMINISTRATION, DOCKET NO. E–7080

ORDER CONFIRMING AND APPROVING EXCEPTION TO GENERAL RATE SCHEDULE PROVISIONS

(Issued May 1, 1963)

By order issued December 16, 1959, Bonneville Power Administration, Docket No. E–6887 (22 FPC 1046), the Federal Power Commission confirmed and approved Bonneville Power Administration's Wholesale Power Rate Schedules and the General Rate Schedule Provisions applicable thereto for a five-year period beginning December 20, 1959, and ending December 19, 1964.

On January 21, 1963, the Assistant Secretary of the Interior, on behalf of the Bonneville Power Administration (Bonneville), filed with the Commission for confirmation and approval, pursuant to the provisions of the Bonneville Act (50 Stat. 731), an exception to Bonneville's General Rate Schedule Provisions applicable to the Pacific Northwest Coordination Agreement (1962–1963) for a one year period ending August 31, 1963, and applicable, for the same period, to all other customers of Bonneville not party to the Coordination Agreement but who purchase power under the computed demand provisions of Bonneville's rate schedules.

Section 6(k) of the aforesaid (1962–1963) Coordination Agreement reads as follows:

The Adjusted Load actually served by a System (exclusive of secondary loads which can be served within the limitations of the foregoing provisions of this section) shall not exceed that System's Firm Load Carrying Capability during

[2] *Supra*, footnote 1.

the Drawdown Period. A party may change its Firm Load Carrying Capability in any month by an amount not greater than the sum of one percent of the party's estimated Adjusted Load for that month and three and one-half percent of the total storage owned by, or available on a firm basis to, such party, expressed in megawatt months, for the seven month period starting September 1, 1962; provided, however, that the algebraic sum of all such changes in the party's Firm Load Carrying Capability shall be zero at the end of such seven month period.

In three of BPA's Wholesale Power Rate Schedules, namely, A–4, C–4 and F–4, computed demand is one of several alternatives used in determining billing demand. The method of determining computed demand is covered in Section 2.3 of the General Rate Schedule Provisions. The monthly computed demand for a purchaser having seasonal storage facilities is the difference between the purchaser's actual system demand and his assured capabilty, the latter being the purchaser's total system resources less reserves under critical water conditions. This is explained in Subsection B(2) of Section 2.3 of the General Rate Schedule Provisions. It is a requirement of Subsection B(2) that assured monthly capabilities be determined prior to the beginning of each operating year. The above Section 6(k) of the Pacific Northwest Coordination Agreement for 1962–1963, provides for modification of a system's firm load carrying capability in an "after-the-fact" manner, thus constituting an exception to Subsection B(2).

A similar exception under the provisions of Section 6(k) of the 1961–1962 Pacific Northwest Coordination Agreement which utilized a slightly different formula for computation of the after-the-fact adjustment, was approved by Commission order issued May 8, 1962 (27 FPC 919).

Bonneville states that it is the purpose of this provision to insure optimum power production from existing facilities by diminishing contractural restrictions on the flexibility of operation of a system's resources.

Bonneville has strongly supported the view, in which we concur, that coordinated development and operation of the region's power resources is essential to assure the region of maximum low cost power benefits consistent with nonpower water uses. Because of the difficult and complex problems involved in developing a long-term coordination agreement, Bonneville has, during the 1961–1962 and 1962–1963 operating years, participated in simplified one-year contracts, namely, the coordination agreements referred to above. Bonneville claims that operating under these agreements, the parties have gained experience in maximizing firm load carrying capability for the area. Our reasons for approving the proposed exception to Bonneville's General Rate Schedule Provisions would be incomplete without some mention of this general background since Section 6(k) is difficult, if not impossible, to consider apart from the agreement as a whole.

Notice of the proposed exception to Bonneville's currently effective General Rate Schedule Provisions was published in the Federal Register on February 6, 1963 (28 F.R. 1168), stating that any person desiring to make comments or suggestions with respect thereto should submit the same on or before February 21, 1963. No comments or suggestions have been received.

The Commission finds:

It is appropriate for the purposes of the Bonneville Act that the proposed exception to Bonneville's General Rate Schedule Provisions contained in Section 6(k) of the 1962–1963 Pacific Northwest Coordination Agreement, and the application of this exception to other customers not party to the Agree-

ment but who purchase power under the computed demand provisions of Bonneville's rate schedules be confirmed and approved for the period ending August 31, 1963.

The Commission orders:

The proposed exception to Bonneville's General Rate Schedule Provisions contained in Section 6(k) of the 1962–1963 Pacific Northwest Coordination Agreement, and its application to other customers not party to the Agreement but who purchase power under the computed demand provisions of Bonneville's rate schedules is hereby confirmed and approved for the period ending August 31, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

INTERSTATE POWER COMPANY, DOCKET NO. E–7086

ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS AND ADDITIONAL COMMON STOCK

(Issued May 2, 1963)

Interstate Power Company (Applicant), incorporated under the laws of the State of Delaware and domesticated in the States of Illinois, Iowa, Minnesota, and South Dakota, with its principal business office in Dubuque, Iowa, filed an application on March 21, 1963, for an order pursuant to Section 204 of the Federal Power Act authorizing the issuance and sale at competitive bidding of $6,000,000 principal amount of First Mortgage Bonds, Series due 1993, and the issuance and sale of 154,194 (maximum) additional shares of Common Stock, par value of $3.50 per share.

Applicant proposes to issue the Bonds under its Indenture of Mortgage, dated as of January 1, 1948, to The Chase Manhattan Bank and Arthur F. Henning, (successor) Trustees, as heretofore supplemented, and as to be further supplemented by a proposed Ninth Supplemental Indenture to be dated as of May 1, 1963.

According to the application, Applicant proposes initially to offer for subscription by its common stockholders 132,294 shares of Common Stock. Rights to subscribe are to be evidenced by a single form of transferable Subscription Warrant expressed in terms of Rights, the number of Rights evidenced by each Warrant to be equivalent to the number of shares of Applicant's common stock held of record on the record date (3:30 p.m., New York Time, on or about May 22, 1963) by the stockholder. Warrant holders are to have a "Primary Subscription Right" to subscribe for these shares of Common Stock on the basis of one share for each 26 shares of common stock held of record; in addition, where holdings are not evenly divisible by 26 or are less than 26, Warrant holders are to have an "Incidental Right" to subscribe for one full share with the number of Rights which exceed a multiple of 26 or are less than 26. There is also a conditional "Secondary Subscription Right" of oversubscription. Up to 21,900 more shares of Common Stock (maximum) will be issued only to the extent, if any, that it is necessary to issue more than the aforementioned 132,294 shares by reason of the exercise of "Incidental Rights."

The price at which the Common Stock is to be offered to common stockholders will be determined by the Board of Directors of Applicant, such price to be fixed in relation to, and at an appropriate discount from, the then market

price of Applicant's presently issued and outstanding common stock. Any of the 132,294 shares of Common Stock which are not subscribed for pursuant to the afore-mentioned subscription offer are proposed to be sold to underwriters at the same price at which shares of the Common Stock are to be offered to stockholders. The compensation of the underwriters for commitment to purchase any such unsubscribed Common Stock at such price is proposed to be fixed by competitive bidding.

On or about May 10, 1963, Applicant proposes to invite sealed, written bids for the purchase of the Bonds and any unsubscribed Common Stock by newspaper publication and by distribution of public invitations for bids. Copies of the terms and conditions relating to the bids will be made available by Applicant. All bids, whether from a single bidder or a group of bidders, are to be in writing on the forms of bid furnished by Applicant and are to be for the purchase of the entire issue of Bonds, or unsubscribed shares of Common Stock. Each bid on the Bonds is to specify, among other things, (1) the coupon rate of the Bonds, which is to be a multiple of 1/8 of 1%, (2) the price, exclusive of accrued interest, to be paid to Applicant for the Bonds, which is to be not less than 99% and not more than 102¼% of the principal amount thereof, and (3) that accrued interest from May 1, 1963, to the date of payment and delivery will be paid to Applicant by the purchaser or purchasers. Each bid on the unsubscribed Common Stock is to specify, among other things, (1) the price per share to be paid to Applicant (which price is to be the price determined by Applicant, as afore-said) and (2) the aggregate amount to be paid by Applicant to the bidder or bidders as compensation for their commitments and obligations in connection with the purchase of the unsubscribed Common Stock.

Unless postponed, all bids for the purchase of the proposed issuance of Bonds and unsubscribed Common Stock are to be delivered to Applicant at the office, of The Chase Manhattan Bank, 24th floor Conference Room, 1 Chase Manhattan Plaza, New York 15, N.Y., on May 22, 1963 at or before 11 a.m. for the Common Stock bids and 11:30 a.m. New York Time for the Bond bids. The terms and conditions relating to the bids provide that the Applicant may return or reject all bids on the Bonds or unsubscribed Common Stock or both or may exclude individual bids for certain specified reasons. Of those bids not so rejected or excluded Applicant will accept that bid for the Bonds which provides the lowest "annual cost of money" to Applicant, to be determined as provided in the terms and conditions relating to bids for the Bonds; and that bid for the unsubscribed Common Stock which specifies the lowest aggregate amount of compensation to be paid by Applicant to the bidder or bidders, in accordance with the terms and conditions relating to bids for the unsubscribed Common Stock. Each bid on the Bonds must be accompanied by a certified or official bank check or checks for 3% of the principal amount of the Bonds, namely $180,000. Each bid for the unsubscribed Common Stock must be accompanied by a certified or official bank check or checks in the aggregate amount of $50,000.

The net proceeds to be received by Applicant from the issuance and sale of the Bonds and Common Stock, an estimated $9,055,000 will be used by Applicant to discharge short term notes in the amount of $5,350,000[1] and for partial payment of the Applicant's 1963 construction program which has an estimated cost of $10,942,000. The notes evidence bank loans which were used to pay a

[1] These notes were issued pursuant to authorization granted by Commission order issued May 4, 1962, *Interstate Power Company*, Docket No. E-7028 (27 FPC 905).

portion of the cost of the company's 1962 construction program. Applicant's construction program for 1963 consists primarily of raising the voltage of its main transmission system from 69 kv to 161 kv. This requires construction of 161 kv lines and 161 kv substations.

Written notice of the application has been given to the Commerce Commission of Illinois, the Minnesota Railroad and Warehouse Commission, the South Dakota Public Utilities Commission, and the State Commerce Commission of Iowa. Notice has also been given by publication in the Federal Register on April 3, 1963 (28 F.R. 3225), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before April 19, 1963, with the Federal Power Commission, Washington 25, D.C. No protest, petition, or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued May 12, 1959, *In the Matter of Interstate Power Company*, Docket No. E-6877 (21 FPC 678).

(2) The proposed issuance and sale of Bonds and Common Stock, as described above, will constitute an issuance of securities within the purview of Section 204 of the Federal Power Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issues here involved are regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance of securities are, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Bonds and Common Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance and sale of Bonds and Common Stock, upon the terms and conditions and for the purposes specified in the application, as described above, are authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds at competitive bidding and the proposed issuance and sale of Common Stock in the manner set forth in the application shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(k)(3) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(k)(4) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof, the price per share to be received by Applicant for the Common Stock, and the amount of any compensation for underwriters to be paid by Applicant in connection with the Common Stock.

(C) This authorization shall expire unless the transactions hereby authorized are consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP62-161

ORDER DENYING INTERVENTION AND ALLOWING LIMITED PARTICIPATION

(Issued May 2, 1963)

On April 10, 1963, the City of Denham Springs, the Town of Walker, Gas Utility District No. 1 of the Parish of Livingston, and Livingston Gas and Utility Company, all of the State of Louisiana, (Petitioners) filed, through counsel, a letter requesting "advice as to the manner" in which Petitioners might intervene in the above-styled proceeding. Petitioners state that they are customers of United Gas Pipe Line Company who will be directly affected by the decision of the Presiding Examiner,[1] that this effect will be adverse and substantial, and that "none of these bodies received any notice that the proceeding was being conducted, and as a result thereof, have had no opportunity to be heard in the matter."

We shall consider the letter as a petition to intervene filed in accordance with Section 1.8 and a request for general relief filed in accordance with Section 1.7(a) of the Commission's Rules of Practice and Procedure (Rules).[2]

The instant proceeding came before the Commission on a Petition for Declaratory Order filed by United Gas Pipe Line Company, supplier of natural gas to petitioners, and was instituted by order of the Commission issued April 13, 1962. This order was published in the Federal Register pursuant to Section 1.19(b) of the Rules,[3] a formal hearing was held, briefs were filed, a decision was handed down by the Presiding Examiner and exceptions thereto have been filed by the parties. The matter is presently before the Commission for final determination.

We do not believe that additional parties can properly be admitted at this juncture of the proceeding and therefore, in view of the lateness of the present attempt to intervene, we shall deny Petitioners the right of full participation as interveners in this matter.

The Petitioners state that their failure to make a timely filing was a consequence of the fact that they had no notice of the proceeding; however, the Federal Register Act of 1935, as amended,[4] provides that notice shall be deemed to have been given to all persons residing within the states of the Union and the District of Columbia if such notice is published in the Federal Register,

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[1] Issued February 25, 1963, 30 FPC 580.

[2] By letter dated April 9, 1963, Petitioners notified certain parties of this attempt to intervene.

[3] 27 F.R. 3778.

[4] 49 Stat. 202.

as provided by the terms of the Act, except where notice by publication is insufficient in law.[5] The decisions of the Courts are in accord. *Aris Gloves* v. *U.S.*, 46 CCPA 41 (1958). We cannot accept, therefore, Petitioner's assertion that they received no notice of this proceeding.

In view of the facts set forth in the petition, however, we shall allow Petitioners to file a brief *amicus curiae*, limited to questions of law based upon the record as it now stands. In addition, we shall permit the filing of a reply to Petitioner's brief by any party who deems such reply necessary. We are reserving the question of Petitioner's right to be heard on oral argument, if such be ordered, and to seek rehearing and appeal, upon a showing of the substance and merits of the Petitioner's arguments.

The Commission orders:

(A) The petition for intervention filed April 10, 1963, in Docket No. CP62–161 is hereby denied.

(B) Petitioner may file, on or before May 15, 1963, a brief, *amicus curiae*, limited to facts disclosed on the existing record in the above-styled proceeding.

(C) Replies to this brief may be filed by parties to this proceeding, including Commission staff, on or before May 29, 1963.

(D) All filings shall conform with the provisions of the Commission's Rules, and especially Section 1.29 thereof.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP63–138; VALLEY GAS TRANSMISSION, INC., DOCKET NO. CP63–140

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 3, 1963)

On November 20, 1962, Transcontinental Gas Pipe Line Corporation (Transco) filed in Docket No. CP63–138 an application pursuant to Section 7(b) of the Natural Gas Act for permission to abandon the facilities hereinafter described subject to the jurisdiction of the Commission, all as more fully represented in the application in this proceeding.

On November 21, 1962, as supplemented on December 20, 1962, Valley Gas Transmission, Inc. (Valley) filed in Docket No. CP63–140 an application pursuant to Section 7(c) of the Natural Gas Act for authority to construct, acquire, and operate certain facilities subject to the jurisdiction of the Commission, all as more fully set forth in the application in this proceeding.

Transco seeks permission to abandon 65,470 feet of 6-inch transmission pipeline and appurtenant facilities running from its 24-inch main line in Nueces County, Texas, to a terminus in the Quinto Creek Field, Jim Wells County, Texas. The application states that the inactive line originally served as a means of transporting natural gas purchased by Transco from the Quinto Creek Field to its main line. Deliveries of gas to Transco from this source steadily decreased as a result of dwindling reserves until November 1959, at which time they finally ceased.

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[5] *Op. cit.*, § 308.

Transco states that it has negotiated a sale of this inactive line and appurtenant facilities in place to Valley for $125,000.

Valley seeks authority to (1) operate approximately 9 miles of 4-inch and 4 miles of 6-inch gathering lines, together with certain compression facilities located in the town of Refugio, Texas, presently owned by the Mission River Corporation (Mission); (2) construct approximately 2 miles of 4-inch pipeline and appurtenant facilities to connect the above-mentioned Mission facilities with the main line facilities of Tennessee Gas Transmission Company (TGT) in Refugio County, Texas; (3) acquire and operate approximately 12.4 miles of 6-inch pipeline located in Jim Wells and Nueces Counties, Texas, presently owned by Transco; and (4) construct approximately 4 miles of 4-inch pipeline and appurtenant facilities to connect the facilities to be acquired from Transco with Valley's Live Oak System in Live Oak and Jim Wells Counties, Texas.

By operating the Mission facilities, Valley proposes to connect numerous shut-in wells and quantities of natural gas presently being flared from existing oil wells in Refugio County. In acquiring the Transco facilities, Valley would connect its Live Oak System to the inactive Transco line in the Orange Grove, Texas area by constructing 4 miles of new pipeline. It would then connect the other end of the inactive Transco pipeline to the main line of TGT at the point where the two lines intersect in Nueces County, Texas. Such acquisition and construction would enable Valley to attach additional supplies of gas available in its Live Oak System for the purpose of augmenting its supply necessary to meet commitments to TGT.

Valley was granted temporary authorization to operate the Mission River acquisition, and to construct and operate the connecting facilities thereto by Commission letter of January 11, 1963.

The total estimated cost to Valley of constructing and acquiring the proposed facilities is $615,000, which will be financed from current company working capital and by loans from the First National City Bank of New York.

Pursuant to due notice, a public hearing was held in Washington, D.C., on April 23, 1963, respecting the matters involved in and the issues presented by the joint application herein. No petition to intervene or protest to the granting of the applications have been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicants, Transcontinental Gas Pipe Line Corporation, with its principal place of business in Houston, Texas, and Valley Gas Transmission, Inc. with its principal place of business in Houston, Texas, are "natural-gas companies" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction, acquisition, and operation thereof by Applicant, Valley Gas Transmission, Inc., are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The abandonment of the facilities by Applicant, Transcontinental Gas Pipe Line Corporation, hereinbefore described, as more fully described in the

application in this proceeding, is subject to the jurisdiction of the Commission under the provisions of Section 7(b) of the Natural Gas Act.

(4) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The construction, acquisition, and operation of the proposed facilities by Applicant, Valley Gas Transmission, Inc., are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) The abandonment of the proposed facilities by Applicant, Transcontinental Gas Pipe Line Corporation, is required by the public convenience and necessity and the order granting permission to so abandon these facilities should be issued as hereinafter ordered and conditioned.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d), and (e) of Section 157.20 of such Regulations.

(8) Permission and approval to abandon the facilities as described in the application, shall not be construed as a waiver of the requirements of the Uniform System of Accounts and the filing of proposed accounting entries upon the consumation of the sale of the facilities involved.

(9) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Valley Gas Transmission, Inc., to construct, acquire, and operate certain natural gas facilities, as hereinbefore described in the application in this proceeding, upon the terms and conditions of this order.

(B) Permission for and approval of the abandonment by Applicant, Transcontinental Gas Pipe Line Corporation, of the facilities as hereinbefore described in the application in this proceeding, be and the same is hereby granted upon the terms and conditions of this order.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d), and (e) of Section 157.20 of such Regulations.

(D) Permission and approval to abandon the facilities as described in the application, shall not be construed as a waiver of the requirements of the Uniform System of Accounts and the filing of proposed accounting entries upon the consumation of the sale of the facilities involved.

(E) The facilities hereby authorized shall respectively, be constructed, acquired, and put into operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 3 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CONTINENTAL OIL COMPANY, DOCKET NO. CI62-1508

ORDER CONDITIONALLY APPROVING PROPOSED SETTLEMENT AND CONDITIONALLY REISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 6, 1963)

On June 18, 1962 Continental Oil Company filed an application for a certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act as successor in interest to Berkshire Oil Company [1] to sell gas to Transcontinental Gas Pipe Line Corporation (Transco). On October 22, 1962 Continental amended its application to reflect the transfer of certain interests by Berkshire. The gas in question is produced from the North Thibodeaux Field, LaFourche Parish, Louisiana.

Continental asserts that under its agreement with Berkshire the effective date of transfer was November 2, 1961, and represents that prior to that date it had no interest in the sale and delivery of this gas to Transco.

On December 10, 1962 Continental filed an offer of settlement (and related petition) concurred or joined in by Transco, The Brooklyn Union Gas Company, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, Public Service Electric and Gas Company, and The United Gas Improvement Company. Berkshire is not a party to the offer of settlement.

Under the terms of the offer of settlement the total price would be 20.625 cents per Mcf (at 15.025 psia) [2] from and after July 1, 1962. There would be a moratorium on increased rate filings until July 1, 1967 subject, however, to the earlier outcome of the south Louisiana area rate proceeding. Continental would extend the make-up period under its take-or-pay-for clause to four years. Continental would refund to Transco $13,500 (inclusive of interest) on account of sales prior to July 1, 1962; it would also refund one hundred per cent of any excess above the settlement price received on or after July 1, 1962. The offer of settlement proposes that no interest accrue on the latter amount; but our approval should be contingent upon interest at a rate of 7% per annum accruing until December 31, 1962, the last day of the month in which the offer of settlement was filed. No party has opposed the offer of settlement.

The Commission finds:

(1) Continental Oil Company is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sale of natural gas is subject to the jurisdiction of the Commission, and such sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

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[1] Berkshire was granted a certificate to make these sales in Docket No. G-13197, 20 FPC 264; but such certificate was judicially remanded and is the subject of litigation in *Placid Oil Company, et al.*, Docket No. G-13183, *et al.*

[2] Inclusive of state taxes.

(3) Continental is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and a certificate should be issued as ordered below.

(5) The conditions attached to the certificate herein issued are required by the public convenience and necessity.

(6) No party has opposed waiver of intermediate decision in these proceedings.

The Commission orders:

(A) The motion for waiver of the intermediate decision procedure is granted.

(B) A certificate of public convenience and necessity is hereby issued upon the conditions set forth herein to Continental Oil Company for the sale of natural gas in interstate commerce for resale as proposed, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in Continental's application.

(C) The certificate issued by paragraph (B) above, is granted upon the express condition that Continental comply fully with the terms of the settlement proposal referred to above and which was entered into evidence in this proceeding, which settlement is expressly approved, subject to interest accruing through December 31 on excess receipts since July 1, 1962.

(D) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposal, Continental shall report to the Commission, in writing and under oath, the amount of the refunds made to Transcontinental Gas Pipe Line Company, showing separately the amount of principal and interest so paid and the basis used for such determination, together with a release from Transco showing receipt of the refunds in conformity to the settlement as approved.

(E) Upon full compliance of Continental with all the terms of this order and of the settlement proposal, Continental shall be relieved of any further refund obligations in this proceeding and said proceeding shall terminate.

(F) The certificate herein issued is not transferable and shall be effective only so long as Continental continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(G) The grant of the certificate herein shall not be construed as a waiver of the requirements of Section 4 of the National Gas Act, or of Part 154 of the Regulations thereunder; *provided, however,* that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(H) The grant of the certificate herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Continental, particularly any proceeding under Section 5 of the Natural Gas Act, and is without prejudice to claims or conten-

tions which may be made by the Commission, Continental, the Commission staff, or any affected party herein in any other proceeding.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

HUMBLE GAS TRANSMISSION COMPANY, DOCKET NO. CP63–56

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 6, 1963)

On February 6, 1963, Humble Gas Transmission Company (Applicant) filed an application to amend[1] the Commission's order, issued January 29, 1963, 29 FPC 162, in Docket No. CP63–56, to authorize a change in the original routing of approximately 4 miles of the pipeline authorized by said order, all as more fully set forth in the application to amend.

The subject order issued to Applicant a certificate of public convenience and necessity authorizing, among other things, the construction and operation of approximately 8.7 miles of pipeline in St. Mary and St. Martin Parishes, Louisiana. Applicant states that it has encountered difficulties in acquiring the rights-of-way for a portion of the original pipeline location. Therefore, Applicant requests that the subject order be amended to authorize a relocation of approximately 4 miles of said line. As a result of the proposed relocation, Applicant will construct and operate an estimated total of 9.1 miles of 16-inch pipeline rather than the 8.7 miles originally estimated.

The application indicates that, as a result of the subject proposal, the total cost of the proposed facilities is estimated to be $882,500 rather than $857,100, as originally estimated.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on March 28, 1963 (28 F.R. 3066). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued January 29, 1963, in Docket No. CP63–56 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued January 29, 1963, in Docket No. CP63–56 be and the same is hereby amended to authorize a relocation of approximately 4 miles of pipeline heretofore authorized by said order, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order shall remain in full force and effect.

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[1] Said pleading was filed as an amendment to the original application; however, since it was filed subsequent to the issuance of the order granting a certificate to Applicant in this docket, said pleading will be treated herein as an application to amend.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NORTHERN NATURAL GAS PIPELINE COMPANY, DOCKET NO. CP61-5

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 6, 1963)

On July 12, 1960, as supplemented on August 23, 1960, and as amended on April 24, 1961, Pioneer Gas Gathering System, Inc. (Applicant's predecessor) filed an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of additional compressor facilities at its Hulldale Compressor Station located in Schleicher County, Texas.

The purpose of the application is to enable Applicant to receive up to 38,000 Mcf per day of surplus residue gas from the outlet om the Sinclair-Skelly Gas Products Plant located adjacent to Applicant's Hulldale Station for resale to Permian Basin Pipe Line Company (which has since been merged into Northern Natural Gas Company). Temporary authorization to construct the proposed facilities was granted on October 6, 1960.

Pursuant to due notice, a public hearing was held in Washington, D.C., on April 23, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Northern Natural Gas Pipeline Company, a Texas corporation with its principal place of business in Amarillo, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon the Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued, upon the terms and conditions stated in paragraph (5) of the Commission's findings, authorizing Applicant, Northern Natural Gas Pipeline Company, to construct and operate the proposed facilities as hereinbefore described, and as more fully described in the application, as supplemented, in this proceeding.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP63-162

FINDING AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 6, 1963)

On December 7, 1962, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP63-162 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the installation of a delivery point with metering and regulating facilities to enable it to sell and deliver natural gas to the Illinois Power Company for resale for domestic and commercial uses to the residents of Mt. Auburn, Illinois.

Applicant states that no change in its rates or change in its contract demand will result from the granting of the certificate herein requested. The total annual sale for the third year of operations will not exceed 18,440 Mcf with the low peak day requirement of 242 Mcf.

The total estimated cost of the proposed metering and regulating station is $16,000, to be financed from funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on April 23, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware Corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G-254 (4 FPC 1081).

(2) The facilities hereinbefore described, as more fully described in the application are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Panhandle Eastern Pipe Line Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON, PROJECT NO. 2145

ORDER APPROVING PROJECT EXHIBIT AND ADJUSTING ANNUAL CHARGES

(Issued May 6, 1963)

Public Utility District No. 1 of Chelan County, Washington, licensee for Project No. 2145, located on the Columbia River, State of Washington, filed on July 11, 1960, August 22, 1960, May 22, 1961, December 4, 1962 and March 6, 1963, for Commission approval, Exhibit K maps for the project.

The Exhibit K maps show lands of the United States within the Wenatchee National Forest and other lands of the United States occupied by the project as being 192.98 acres and 0.20 mile of equivalent 150-foot wide transmission line right-of-way.

Our approval of the Exhibit K maps would establish, for the first time, the amount of Government lands occupied by the project, together with the annual charges for such occupancy. Since the project as now completed is not described in any one license instrument relating to the project, we are hereinafter including a description of the completed project.

The Commission finds:

(1) The annual charges hereinafter fixed for recompensing the United States for the use of its lands, including transmission line occupancy is reasonable.

(2) The following described Exhibit K maps, revised by our staff with the authorization of the licensee to correct certain minor deficiencies, conform to

the Commission's rules and regulations and should be approved as part of the license for the project:

Exhibit K

Sheet No.	FPC No.	Title
K-1 of 2	2145-21	Detail Map Transmission Line—Rocky Reach to North Wenatchee.
K-1	2145-24	Map of Lands Affected.
K-2	2145-25	Do.
K-3	2145-26	Do.
K-4	2145-27	Do.
K-5	2145-28	Do.
K-6	2145-29	Do.
K-7	2145-30	Do.
K-8	2145-31	Do.
K-8A	2145-32	Do.
K-9	2145-33	Do.
K-10	2145-34	Do.
K-11	2145-35	Do.
K-12	2145-36	Do.
K-13	2145-37	Do.
K-14	2145-38	Do.
K-15	2145-39	Do.
K-16	2145-40	Do.
K-17	2145-41	Do.
K-18	2145-42	Do.
K-18A	2145-43	Do.
K-21	2145-44	Do.
K-22	2145-45	Do.
K-23	2145-46	Do.
K-24	2145-47	Do.
K-25	2145-48	Do.
K-26	2145-49	Do.
K-27	2145-50	Do.
K-28	2145-51	Do.
K-29	2145-52	Do.
K-19	2145-53	Do.
K-20	2145-54	Do.
K-2 of 2	2145-56	Detail Map Transmission Line—Rocky Reach to North Wenatchee.
K-1	2145-57	
K-2	2145-58	
K-3	2145-59	Detail Map Transmission Line—Rocky Reach to Columbia No. 2.
K-4	2145-60	
K-5	2145-61	

The Commission orders:

(A) The Exhibit K maps described in finding (2) above are hereby approved as part of the license for the project.

(B) Project No. 2145 consists of:

(a) All lands constituting the project area and inclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license or applications for amendment thereof and which are designated and described as follows:

Exhibit J: FPC Nos. 2145-6 and -7.

Exhibit K: FPC Nos. 2145-21, -24 through -54 and -56 through -61

(b) Principal structures comprising a concrete gravity dam located in sec. 35, T. 24 N., R. 20 E., W.M., Washington, having a gated spillway section about 750 feet long, an intake and powerhouse section integral with the dam about 1,080 feet long and non-overflow sections at the abutments and between the spillway and the powerhouse creating a reservoir, with pool at maximum normal elevation 707 feet and minimum pool elevation 703 feet extending about 43 miles upstream; a fish ladder on the right bank of the river; a powerhouse with an initial installation of seven generating units with a name plate rating of 101,650 kilowatts each and structural provisions for installation of four future units;

a switchyard; a 115-kilovolt transmission line extending from the powerhouse to the North Wenatchee substation; a 230-kilovolt transmission line extending from the powerhouse to the Columbia substation of the Bonneville Power Administration; and other appurtenant facilities; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license or amendment thereof and which are designated and described as follows:

Exhibit L

FPC No.	Title	Latest revision date
2145-11	General Plan of Development	Feb. 27, 1956
2145-13	Sections—Spillway and Nonoverflow Dam	Feb. 27, 1956
2145-17	Power House Cross Sections	Dec. 23, 1957
2145-18	Plan and Sections—Cutoff and Bank Protection at East Abutment	
2145-19	Geological Cross Section at Dam Site	Oct. 2, 1956
2145-20	Proposed Future Navigation Canal and Lock	
2145-55	Plan of Fish Spawning Facilities	

Exhibit M: Statement in five sheets—General Description of Equipment (filed January 13, 1956) and superseded in part by statement in one sheet—General Description of Equipment changes, filed November 29, 1957).

(C) Article 43 of the license is hereby amended to read as follows:

(1) For the purpose of reimbursing the United States for the cost of administration of Part 1 of the Act, a reasonable annual charge in accordance with provisions of Part II of the Commission's regulations. The authorized installed capacity for such purpose is 948,700 horsepower.

(2) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands, exclusive of those used for transmission line purposes only $463.15 effective July 1, 1956, the effective date of the license.

(3) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands used exclusively for transmission line purposes $2.40, effective July 1, 1956.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this instrument. In acknowledgment of the acceptance of this instrument, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

KENNECOTT COPPER CORPORATION, PROJECT NO. 1949

ORDER APPROVING TRANSFER OF LICENSE (MINOR)

(Issued May 7, 1963)

Joint application was filed on December 17, 1962, under Section 8 of the Federal Power Act (Act) by Kennecott Copper Corporation, licensee for minor Project No. 1949, and James Sumpter, of Anchorage, Alaska, for Commission approval of transfer of the license for the project from the former to the latter.

The project is situated on Grouse Creek, near Latouche on Latouche Island, Third Judicial Division, Alaska, and affects lands of the United States within the Chugach National Forest.

The Commission finds:

(1) The proposed transferree is a citizen of the United States and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary for the operation of the project.

(2) Commission approval of the transfer of the license to the proposed transferee upon the conditions set forth herein, will not be inconsistent with the public interest.

The Commission orders:

(A) The transfer of the license for minor Project No. 1949 from Kennecott Copper Corporation to James Sumpter is hereby approved, effective as of the date of conveyance of the project properties under the license, subject to Section 9.3 of the Commission's Regulations under the Federal Power Act; provided that the transferee shall be subject to the conditions and obligations of the license and to all the provisions of the Act to the extent as though it were the original licensee for the project.

(B) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Federal Power Act, and failure to file such an application shall constitute acceptance of the license for Project No. 1949 by James Sumpter. In acknowledgment of the acceptance of such license, this instrument shall be signed by James Sumpter and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MINNESOTA POWER & LIGHT COMPANY, PROJECT NO. 346

ORDER AMENDING LICENSE (MAJOR)

(Issued May 7, 1963)

Application was filed January 28, 1963, by Minnesota Power & Light Company, under Section 6 of the Federal Power Act, for Project No. 346 to amend Article 19 and to render inapplicable to such license amortization reserve Regulation 17 in effect when the license was issued under the Federal Water Power Act.

The purpose of the amendment is to make the license subject to the current regulations of the Commission with respect to the establishment and maintenance of a reserve for amortization.

The Commission finds:

(1) Public notice of the application has been given. No protests have been received.

(2) The license for Project No. 346, amended as hereinafter provided, is in the public interest.

The Commission orders:

(A) The license for Project No. 346 is hereby amended, effective as of January 1, 1957, as follows:

Paragraph I. The paragraph of the license beginning "NOW, THEREFORE" is amended by inserting the words "except Regulation 17", after the phrase

"being subject to all the terms and conditions of the Act and of the rules and regulations of the Commission pursuant thereto in force on the 6th day of June, 1921,".

Paragraph II. Article 19 of the license is amended to read as follows:

Article 19. After December 31, 1956, six (6) percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves, pursuant to section 10(d) of the Act; one-half of the project surplus earnings, if any, accumulated after December 31, 1956, in excess of six (6) percent per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year, provided, that, if and to the extent that there is a deficiency of project earnings below six (6) percent per annum for any fiscal year or years after December 31, 1956, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission.

(B) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NOS. G–1116, AND G–2506

ORDER DIRECTING REFUNDS OF EXCESS CHARGES

(Issued May 7, 1963)

On April 27, 1961, the Commission issued its Opinions No. 269–A and 344 and orders in the above proceedings, 25 FPC 784 and 787, respectively. In Opinion No. 344, among other things, the Commission modified and affirmed the decision of the Presiding Examiner issued herein on February 10, 1959, and ordered Panhandle Eastern Pipe Line Company (Panhandle) to file a recomputation of its cost of service and rates in accordance with the opinion. The Commission reserved its approval of the costs of service and rates subsequently filed by Panhandle on July 25, 1961, and has not yet ordered any refunds to be made.

In Opinion No. 269–A, the Commission modified its Opinion No. 269 issued April 15, 1954, in accordance with the opinion of the court in *City of Detroit*[1] and, as in Opinion No. 344, *supra*, ordered Panhandle to file a recomputation

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[1] *City of Detroit, Michigan* v. *F.P.C.*, 230 F. 2d 810 (CADC), certiorari denied 352 U.S. 829.

of its cost of service and rates. Panhandle made such filing on July 25, 1961, and the Commission, having reserved its approval, has not ordered any refunds to be made in addition to those made pursuant to Opinion No. 269 and other prior orders.[3]

Meanwhile, Panhandle sought court review of the opinions and orders issued April 27, 1961, and the mandate of the United States Court of Appeals for the District of Columbia Circuit was handed down on February 26, 1963.[3] That court affirmed the Commission's determinations on all issues except that concerning gasoline extraction revenue credit which the court remanded for further consideration. The amounts to be refunded under the issues now finally determined constitute a large fund of dollars.[4] The refunding of those amounts to the persons entitled thereto should not be delayed pending our consideration of the remanded issue. Accordingly, Panhandle should be required to make the refunds as hereinafter provided.

Turning now to the said filings made by Panhandle on July 25, 1961, of recomputed costs of service and rates,[5] we find that they are in reasonable compliance with our opinions, except insofar as they include the same percentage (23.31336%) of resale price escalation as that contained in Opinion No. 269 (Table 10 Appendix I), for cost of gas purchased from Phillips Petroleum Company, Shamrock Oil and Gas Company, and, as to the G-1116 period only, from Magnolia Petroleum Company. In accordance with the Commission's method of reflecting such escalation, the percentage should vary with the ratio of total jurisdictional cost of service to revenues under prior effective rates. Pending determination on the remanded issue, there is no need to require Panhandle to recompute this escalation. It will suffice for purposes of such refunds ordered herein to utilize the methods contained in its July 25, 1961, reports, subject to further order.

The Commission orders:

(A) Within 30 days from the date of this order, and subject to approval of the Commission, Panhandle shall file with the Commission and serve upon all parties hereto recomputations of its cost of service for the five respective rate periods subject to these proceedings, in the same manner as and utilizing the computations contained in the report filed by Panhandle on July 25, 1961 as aforementioned, modified to reflect the reservation of the remanded gasoline extraction revenue credit issue and Panhandle shall also file at the same time recomputations of the refunds of excess charges due each of its customers in the same manner as filed by Panhandle on August 11, 1961, modified to reflect the recomputations of its cost of service as herein required, including computations of the interest due at 6 percent per annum as provided in Opinions

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[3] Interim Order modifying and affirming as modified decision of Presiding Examiner and providing for interim refunds, issued in Docket No. G-1116, December 30, 1955, 14 FPC 438, 473. Order on petitions for rehearing, issued February 24, 1956, 15 FPC 1156; decision on principal and interest payments issued October 12, 1956, 17 FPC 142; order determining treatment of interest on refund payments, issued February 5, 1957, 17 FPC 167.

[3] *Panhandle Eastern Pipe Line Co.*, v. *F.P.C.*, 305 F. 2d 763, certiorari denied 372 U.S. 916 (Supreme Court, No. 614, February 18, 1963).

[4] Panhandle reported on July 25, 1961, that the excess revenues computed under protest in compliance with Opinions Nos. 269-A and 344, totaled over $13.3 million in Docket No. G-1116 and over $30.7 million in Docket No. G-2506. On a test year basis in each docket approximately $1.3 million per year of net revenues remain in issue.

[5] Rate Periods: G-1116, February 20, 1952 through December 31, 1954; G-2506, January 1, 1955, through August 31, 1958.

Nos. 269–A and 344 (paragraphs (C)) and also including summary tabulations of such refunds by dockets, zone, rate schedule and customers.

(B) Within 10 days from the date of Panhandle's filing of recomputations of its cost of service and appropriate refunds as required in paragraph (A) hereof, any party to these proceedings may file its comments to such filings.

(C) Within 15 days from the date of Panhandle's filing pursuant to paragraph (A), unless advised by letter of the Commission Secretary that its filings pursuant to paragraph (A) are not acceptable Panhandle shall make refunds due to its jurisdictional customers in accordance with the recomputations of refunds required by paragraph (A) hereof.

(D) Within 20 days after making refunds as required by paragraph (C) hereof, Panhandle shall file with the Commission and serve upon all parties hereto a verified statement setting out that it has made the refunds of principal amount and interest to each customer as shown in the computation filed pursuant to (A) above, together with a receipt or equivalent proof of payment from each cutsomer acknowledging receipt of the refunds and interest due.

(E) This order is without prejudice to any findings or orders which have been or may hereafter be made by this Commission in these proceedings with respect to the remanded gasoline extraction issue, aforementioned, and with respect to the proper reflection of the percentage of resale price escalation allowed on certain purchased gas costs included in the cost of service computations filed pursuant to paragraph (A) hereof, as aforementioned.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SINCLAIR OIL & GAS COMPANY, DOCKET NO. G–20297

ORDER CONDITIONALLY APPROVING PROPOSED SETTLEMENT AND CONDITIONALLY REISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 7, 1963)

On December 4, 1959 Sinclair Oil & Gas Company filed in Docket No. G–20297 an application for a certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act to sell gas to Transcontinental Gas Pipe Line Corporation (Transco). Said gas is produced from gas wells in the Guidry No. 1 Unit, Lake Arthur Field, Jefferson Davis Parish, Louisiana. Sinclair owns some six per cent of the working interest in such unit; Sinclair's gas is being produced and delivered to Transco by the operator, Austral Oil Company, under Austral's F.P.C. Gas Rate Schedule No. 10 and pursuant to certificate issued in Docket No. G–14164 on July 30, 1962, *Texaco Inc.*, 28 FPC 247. That certificate order approved, among other things, Austral's offer of settlement in Docket No. G–14164; and such settlement provided for refunds in future deliveries of natural gas, rather than in cash.

On November 14, 1962 Sinclair filed a motion to approve settlement agreement. Sinclair attached to its motion letters from The United Gas Improvement Company, Philadelphia Electric Company, and Long Island Lighting Company (intervenors in the proceeding) indicating a willingness to settle in accordance with the principles approved in *Texaco Inc.*, *supra*. On February 21, 1963 Transco filed a letter declaring that it had no objection to the proposed settlement and spelling out the relationship between Sinclair's proposal and the operation of the Austral settlement.

Under the terms of Sinclair's proposal, the settlement price would continue to be 20.625 cents per Mcf (@ 15.025 psia), under the same terms and conditions of the Austral settlement agreement as approved in *Texaco Inc., supra.* Sinclair has already refunded to Austral, and Austral passed on to Transco, a cash refund (including interest of $20,055.60. Since the Sinclair proposal is so closely related to the Austral settlement, Sinclair should include a copy of each offer of settlement and of our order of July 30, 1962, in *Texaco Inc., supra,* approving Austral's offer, as supplements to its rate schedule herein.

The Commission finds:

(1) Sinclair Oil & Gas Company, is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sale of natural gas is subject to the jurisdiction of the Commission, and such sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Sinclair is able and willing properly to do the act and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and a certificate should be issued as ordered below.

(5) The conditions attached to the certificate herein issued are required by the public convenience and necessity.

(6) No party has opposed waiver of intermediate decision in these proceedings.

The Commission orders:

(A) The motion for waiver of the intermediate decision procedure is granted.

(B) A certificate of public convenience and necessity is hereby issued upon the conditions set forth herein to Sinclair for the sale of natural gas in interstate commerce for resale as proposed, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in Sinclair's application.

(C) The certificate issued by paragraph (B) above, is granted upon the express condition that Sinclair comply fully with the terms of this order and of the settlement proposal referred to above and which was entered into evidence in this proceeding, which settlement is expressly approved.

(D) Upon full compliance of Sinclair with all the terms of this order and of the settlement proposal, Sinclair shall be relieved of any further refund obligations in this proceeding and said proceeding shall terminate.

(E) The certificate herein issued is not transferable and shall be effective only so long as Sinclair continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(F) The grant of the certificate herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Regulations thereunder.

(G) The grant of the certificate herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter

be made by the Commission in any proceeding now pending or hereafter instituted by or against Sinclair, particularly any proceeding under Section 5 of the Natural Gas Act, and is without prejudice to claims or contentions which may be made by the Commission, Sinclair, the Commission staff, or any affected party herein in any other proceeding.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MINNESOTA POWER & LIGHT COMPANY, PROJECT NO. 469

ORDER FURTHER AMENDING LICENSE

(Issued May 8, 1963)

Application was filed January 28, 1963 by Minnesota Power & Light Company for further amendment of its license, under Section 6 of the Federal Power Act, for Project No. 469 to amend Article 18 and to render inapplicable to such license amortization reserve Regulation 17 in effect when the license was issued under the Federal Water Power Act.

The purpose of the amendment is to make the license subject to the current regulations of the Commission with respect to the establishment and maintenance of a reserve for amortization.

The Commission finds:

(1) Public notice of the application has been given. No protests have been received.

(2) The license for Project No. 469, further amended as hereinafter provided, is in the public interest.

The Commission orders:

(A) The license for Project No. 469 is hereby further amended, effective as of January 1, 1957, as follows:

Paragraph I. The paragraph of the license beginning "NOW, THEREFORE" is amended by inserting the words "except Regulation 17" after the phrase "being subject to all the terms and conditions of the Act and of the rules and regulations of the Commission pursuant thereto as amended and made effective on the first day of April, 1924,".

Paragraph II. Article 18 of the license is amended to read as follows:

Article 18. After December 31, 1956, six (6) percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves, pursuant to Section 10(d) of the Act; one-half of the project surplus earnings, if any, accumulated after December 31, 1956, in excess of six (6) percent per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year, provided, that, if and to the extent that there is a deficiency of project earnings below six (6) percent per annum for any fiscal year or years after December 31, 1956, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission.

(B) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON, PROJECT NO. 2114

ORDER FURTHER AMENDING LICENSE

(Issued May 9, 1963)

Application was filed on May 9, 1962, and supplemented on May 14, 1962, by Public Utility District No. 2 of Grant County, Washington, licensee for Project No. 2114, for further amendment of the license for the project, located on the Columbia River in Chelan, Douglas, Kittitas, Grant, Yakima and Benton Counties, Washington.

The application seeks Commission approval of certain revised Exhibits J, K, and M, and authorization to construct additional transmission facilities, as part of the project, the same being three 230-kv transmission lines from Wanapum powerhouse to Wanapum-Vantage substation; one 230-kv transmission lines from Priest Rapids to Wanapum-Vantage substation; and a 230-kv transmission line from Wanapum-Vantage substation to Columbia substation of the Bonneville Power Administration.

The Department of the Interior has advised it has no objection to the proposed amendment, provided that the Project Manager of the Department's Columbia Basin Project, Ephrata, Washington, be given an opportunity to coordinate with the licensee on review of final construction plans and drawings to avoid the possibility of intereference with existing or proposed Bureau of Reclamation facilities.

We are not herein approving revised Exhibit K (FPC Nos. 2114–115, –116 and –117) since it was revised by the licensee only to show the proposed transmission line locations, with no survey information as to width of right-of-way, center line survey, stationing or areas involved.

The Commission finds:

(1) The license, further amended as hereinafter provided, is in the public interest.

(2) The transmission lines described in the second paragraph of this order will serve as parts of the project within the meaning of Section 3(11) of the Federal Power Act and should be included in the license for the project.

(3) Revised Exhibit J (FPC No. 2214–114) filed as part of the application, superseding Exhibit J (FPC No. 2114–3) dated June 15, 1955 now part of the license; and revised Exhibit M in 3 sheets, dated May 7, 1962, filed as part of the application, superseding Exhibit M in 2 sheets pertaining to the Priest Rapids Development dated March 4, 1958 and Exhibit M in 3 sheets pertaining to the Wanapum Development dated February 16, 1959, now parts of the license,

conform to the Commission's rules and regulations and should be approved as parts of the license.

(4) The exhibits described in finding (3) above as having been superseded should be eliminated from the license.

The Commission orders:

(A) The license for Project No. 2114 is hereby further amended, effective as of April 1, 1963, as follows:

Paragraph I. Subparagraphs (1) and (2) of Paragraph (b) of the license is amended to read as follows:

(1) "Priest Rapids Development" at River Mile 397 from the mouth of the Columbia River, to consist of a concrete ogee spillway section containing 22 tainter gates; earthfill embankments connecting the concrete spillway and powerhouse to the high ground at both abutments; fish ladders and associated facilities; design provisions for construction of future navigation locks; a reservoir formed by the dam; a powerhouse integral with the dam, to contain ten (10) vertical shaft Kaplan turbines (in addition, there is feasibility of adding at least six more units) the turbines to be rated for 114,000 horsepower each at a 78-foot net head (total 1,140,000 hp with ten units; 1,824,000 hp potential final), connected to generators rated at 83,000 kva (0.95 pf) each (total 788,500 kw with ten units) and to contain transformers with 230-kv output voltage; three 230-kv single-circuit transmission lines between Priest Rapids powerhouse and Midway Substation of Bonneville Power Administration and one 230-kv transmission lines between Priest Rapids powerhouse and Wanapum-Vantage substation; and appurtenant hydraulic, mechanical, and electrical facilities and miscellaneous project works; and

(2) "Wanapum Development" approximately at River Mile 415, to consist of a concrete gee spillway section containing 12 tainter gates, earthfill embankments connecting spillway and powerhouse to high ground at each abutment; fish ladders and associated facilities; design provisions for construction of future navigation locks; a reservoir with normal operating pool level at elevation 570; a powerhouse integral with the dam, to contain 10 vertical shaft Kaplan turbines (with provisions for six additional similar units) to be rated for 120,000 horsepower each at 80 feet net head (total 1,200,000 hp initial, 1,920,000 hp potential final) connected to generators rated at 87,500 kva (0.95 pf) each (total of 831,000 kw with ten units), and to contain transformers with 230-kv output voltage; switching station; three 230-kv transmission lines between Wanapum powerhouse and Wanapum-Vantage substation and a 230-kv transmission line from Wanapum-Vantage substation to Columbia substation of Bonneville Power Administration; and appurtenant hydraulic, mechanical, and electrical facilities and miscellaneous project works.

Paragraph II. The license is amended by adding thereto the following additional article:

Article 54. Licensee shall consult and cooperate with the Project Manager, Bureau of Reclamation, Ephrata, Washington, and coordinate construction of the Vantage substation—Columbia substation 230-kv line to avoid interference with Bureau of Reclamation facilities.

(B) The revised exhibits described in findings (3) above are hereby approved as part of the license for the project, and the exhibits described in the same finding as being superseded are hereby eliminated from the license for the project.

(C) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MIDWESTERN GAS TRANSMISSION CO., DOCKET NOS. G–16841 AND RP61–19

ORDER FIXING PROCEDURE FOR DETERMINATION OF RATE-REDUCTION LIABILITY

(Issued May 10, 1963)

The Commission's Opinion No. 320, which certificated Midwestern Gas Transmission Company's Southern System contained the following passage (21 FPC at 662):

> Before leaving the matter of Midwestern's rates we should note that Midwestern's cost of service per unit of gas sold may very well decrease in the future, not only for the reason indicated above that Midwestern will be selling increased volumes of gas but also because Tennessee's rates are currently subject to proceedings in Docket Nos. G–11980 and G–17166. Should its costs decrease for either of these reasons Midwestern should file rate changes subject to our review reflecting such decrease in costs. The decreases should be applied to the demand component of the rate, rather than the commodity component. In this way Midwestern's rate levels will trend towards that computed under the *Seaboard* formula. Of course, should a reduction in Tennessee's filed rates result in a refund, Midwestern should make a corresponding refund to its customers subject to our approval.

On December 21, 1962, the Commission approved a settlement of all the pending Tennessee increased rate proceedings as a consequence of which Tennessee filed reduced rates effective as of October 1, 1962. Subsequently, in order to pass on certain later decreases in its suppliers' rates, Tennessee filed further reduced rates effective as of January 1, 1963. The rate for Tennessee's sales to Midwestern is now substantially below the rate proposed in Docket No. G–17166, which was in effect at the time of Opinion No. 320.

On April 11, 1963, the Commission's Secretary, by direction of the Commission, sent to Midwestern Gas Transmission Company a letter which inquired as to when Midwestern planned to file whatever reduced rates are required by Opinion No. 320, as a result of Tennessee's filing reduced rates.[1] In a reply received on April 23, 1963, the company denied that it is under any present obligation to make rate reductions. Midwestern contends that the portions of Opinion 320 to which the Secretary's letter referred were not intended to impose an automatic, self-executing rate-reduction obligation. Midwestern relies on the absence of any reference to rate reductions in the ordering clauses of

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[1] On April 22, 1963, Peoples Gas Light & Coke Company, one of Midwestern's customers, filed in Docket No. RP63–11 a formal complaint that Midwestern had failed to make both rate reductions for the period after October 1, 1962 and refunds for the G–19983 period, as allegedly required by Opinion No. 320. Midwestern has not yet submitted an answer to People's complaint.

the Opinion and to an alleged absence of any language of command. Further the company contends that at most Opinion No. 320 contemplated a future rate reduction by Midwestern in the event that a decrease in its supplier's rate caused a *net* decrease in its cost of service per unit of gas sold, a circumstance that could only be brought to light after a full rate case, such as is now pending in the Section 5(a) proceeding, Docket No. RP61–19. According to Midwestern, its present rates are in fact insufficient to recover its cost of service, and it asserts that it will prove the existence of off-setting increased costs at the hearing of Docket No. RP61–19.

Finally Midwestern appears to contend that the rate reductions made by Tennessee were a consequence of proceedings in Docket No. G–19983 (which involved increased rates of Tennessee filed after Opinion No. 320) and that any rate reduction obligation imposed by Opinion No. 320 could have encompassed only the passing on of whatever reductions were to result from the then existing Docket No. G–17166.

In the Commission's judgment, neither the use of "should" rather than "shall" in the body of Opinion No. 320 nor the absence of any repetition of the direction to Midwestern in an ordering clause supports Midwestern's position that the Commission did not impose a rate reduction obligation. Furthermore, we cannot accept the argument that any rate reduction obligation imposed by Opinion No. 320 would be terminated merely because Tennessee subsequently to Opinion No. 320, filed still further increased rates which were subject to investigation in a new proceeding with a new docket number.

It appears, however, that Midwestern should have an opportunity to justify its position that the Commission, in Opinion No. 320, expected Midwestern to make a rate reduction only if there had occurred a net reduction in Midwestern's cost of service—i.e., taking into account any off-setting increases in costs. Without at this time determining whether this is the proper interpretation of the scope of the obligation imposed in Opinion No. 320, it appears to the Commission that Midwestern, even on its own view, should have submitted to the Commission a report justifying, on a cost-of-service basis, its failure to make rate reductions corresponding to the Tennessee reductions.

We are aware, however, that hearings are soon to commence in Docket No. RP61–19, wherein the just and reasonable rate for Midwestern will be determined prospectively. In the normal course of events, much of the evidence to be submitted in Docket No. RP61–19 would be relevant to the question of whether, for the period from October 1, 1962 to the date of the 5(a) order, Midwestern's cost-of-service will have been reduced below the level upon which the rate provisions of Opinion No. 320 were predicated. The most efficient means of acquiring the record data that may be necessary to determine the obligations of Midwestern under Opinion No. 320 will be to incorporate that issue into the pending Docket No. RP61–19.

Midwestern should, of course, be free to submit any evidence which may be of particular relevance to this additional question. We take note that under the schedule which the Examiner has fixed for the further filing of evidence, Midwestern was due to serve its prepared testimony and exhibits on or before May 9. If Midwestern wishes to submit additional evidence on this point, it should notify the Presiding Examiner and all parties of its intention on or before May 15 and serve the evidence on or before May 27. After Midwestern's notification, the Presiding Examiner will be able to determine whether any modifications in the schedule which he has heretofore set will be necessary. After service of this additional evidence, if any, the Examiner may make appropriate provisions

for rebuttal by other parties. When the Examiner's findings come before the Commission, it will finally resolve the disputed issues in the interpretation of Opinion No. 320.

The Commission orders:

(A) There is hereby incorporated into Docket No. RP61–19, *et al.*, the issue of whether, since October 1, 1962, Midwestern's cost-of-service has been reduced below the level upon which the rate provisions of Opinion No. 320 were predicated, by reasons of reduction in the rates of the supplier, Tennessee Gas Transmission Company, and whether refunds should be made in the amount of such reduction.

(B) Midwestern shall inform the Presiding Examiner and all parties on or before May 15, 1963, whether it intends to submit any evidence of particular relevance to the issue hereby incorporated into these proceedings and shall serve such evidence, if any, on or before May 27, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

BLACK HILLS POWER & LIGHT COMPANY, DOCKET NO. E–7091

ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS

(Issued May 14, 1963)

Black Hills Power & Light Company (Applicant), incorporated under the laws of the State of South Dakota and qualified to do business as a foreign corporation in Wyoming, with its principal place of business at Rapid City, South Dakota, filed an application on April 8, 1963, for an order, pursuant to Section 204 of the Federal Power Act, authorizing the issuance of $999,000 principal amount of First Mortgage Bonds, Series N, 4½%, to be dated May 1, 1963, and to mature May 1, 1993.

The Bonds will be secured by and issued under Applicant's Indenture of Mortgage and Deed of Trust to the Hanover Bank, as Trustee (presently the Manufacturers Hanover Trust Company through merger with Manufacturers Trust), dated as of September 1, 1941, as supplemented and amended, and as to be further supplemented by a proposed Supplemental Indenture to be dated as of May 1, 1963.

Applicant proposes to sell the Bonds to the Manufacturers Hanover Trust Company at a negotiated price of 100% of principal amount and an interest rate of 4½%. The Bonds will not be underwritten. For its services and expenses as Applicant's agent in securing purchasers and negotiating the sale of the Bonds, a fee of $5,000 will be paid to Dillon Read & Co. Inc. by the Applicant.

The proceeds from the proposed issuance of First Mortgage Bonds, estimated at $982,300 will be used by Applicant to repay any outstanding promissory notes, and for financing of its 1963 construction program.

Applicant estimates that its construction budget for its fiscal year ending October 31, 1963 will approximate $3,398,100 including $22,400 in Production Plant, $1,871,800 in Transmission Plant, $1,375,600 in Distribution Plant and $128,300 in General Plant. The estimated amount for transmission facilities includes $1,594,000 for completing its part of the Rapid City-Hot Springs-Chadron 161 kv transmission line which will interconnect Applicant with Consumers

Public Power District of Nebraska. The balance of Applicant's construction program consists of numerous minor additions.

Written notice of the application has been given to the Public Utilities Commission of South Dakota and to the Public Service Commission of Wyoming and to the Governor of each of those States. Notice of the application was also published in the Federal Register on April 24, 1963 (28 F.R. 4062), stating that any person desiring to be heard or to make any protest with reference to the application should on or before May 3, 1963 file with the Federal Power Commission, Washington 25, D.C., petitions or protests. No petition or protest or request to be heard in opposition of the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation organized and existing under the laws of the State of South Dakota, owns and operates facilities (a) for the transmission and sale at wholesale of electric energy generated in Wyoming and consumed in South Dakota, (b) for the transmission of electric energy generated in Wyoming and consumed in Montana, and (c) for the transmission of electric energy generated in South Dakota and consumed in Wyoming and Montana—all of which facilities are in addition to, and do not include, facilities used for the generation of electric energy, facilities used in local distribution or only for the transmission of electric energy consumed wholly by the transmitter, and Applicant is, therefore, a public utility within the meaning of Section 204 of the Federal Power Act.

(2) The proposed issuance of Bonds, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act, and the proposed issuance of Bonds, as described above, is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The fee to be paid was fixed by arm's-length bargaining and does not appear to be unreasonable.

(5) The proceeds of Applicant from the proposed issuance of Bonds will be less than $1,000,000, as described above, and such proposed issuance is, therefore, exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of Paragraph 34.1a(a)(3) thereof.

(6) The proposed issuance of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance of Bonds, upon the terms and conditions and for the purposes specified in the application, as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization shall expire unless the transaction hereby authorized is consummated within 60 days from the date of issuance of this order.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service,

accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body.

(D) Nothing in this order shall be construed to imply any guarantee or obligations on the part of the United States in respect to any securities to which his order relates.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP60-15

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 14, 1963)

On January 19, 1960, as supplemented on April 14, 1960, May 16, 1960, June 21, 1960, August 23, 1961, October 26, 1961, and March 12, 1962, El Paso Natural Gas Company (Applicant), a Delaware corporation with its principal place of business at El Paso, Texas, filed an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities, and the sale and delivery of natural gas to Cascade Natural Gas Corporation (Cascade), and to California-Pacific Utilities Company (Cal-Pac), in the towns of Klamath Falls and Bend, Oregon, and their environs. The proposed facilities and related sales for which Applicant seeks authorization are:

(a) A lateral approximately 17.3 miles in length, consisting of an initial segment of 14.5 miles of 4½" O.D. pipe and an additional segment of 2.8 miles of 8 and ⅝" O.D. pipe, commencing at a point of interconnection with Pacific Gas Transmission Company's (PGT) 36-inch pipeline in Klamath County, Oregon, and terminating in the vicinity of Klamath Falls, Oregon. By letter agreement dated October 17, 1961, Applicant and Cal-Pac have agreed that Cal-Pac will operate the 2.8-mile (8 & ⅝") segment of the lateral as agent of Applicant.

(b) A measuring and regulating station at the terminus of the 14.5-mile (4½") segment of said pipeline.

At the time the Applicant submitted its project cost estimates, its application included a request for authorization to install an additional measuring and regulating station (estimated cost, $14,000) which has since been deleted by a subsequent amendment of the application. Applicant estimates that the total cost of the proposed facilities will be $547,000, and asserts that the deletion of the aforementioned measuring and regulating station will have no appreciable effect on the total estimated project cost or the total estimated cost of service.

Klamath Falls' maximum day and annual requirements are estimated in Mcfs of 1,000 Btu gas at 14.73 psia as follows:

Year	Maximum day	Annual
1st	1,466	283,578
2d	4,058	714,790
3d	4,495	801,634

The town of Bend's maximum day and annual requirements are estimated in Mcf at 14.73 psia as follows:

Year	Maximum day	Annual
1st	1,170	114,574
2d	1,490	152,022
3d	1,811	189,471

The aforementioned sales and deliveries to Cascade and Cal-Pac will be initial service covered by agreements providing for service under Rate Schedules DI–2 (firm) and I–2 (interruptible) as more fully set forth in the first supplement filed April 14, 1960.

Temporary authorization was issued to the Applicant on December 11, 1961.

Pursuant to due notice, a public hearing was held in Washington, D.C., on April 30, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation with its principal place of business at El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the Acts and to perform the service proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon the Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4), and (e) of Section 157.20 of such Regulations. In addition thereto, public convenience and necessity require that the rate schedules certified in this order be conditioned upon the outcome of the proceeding in Docket No. G–13202.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued, upon the terms and conditions of this order, authorizing Appli-

cant, El Paso Natural Gas Company, to construct and operate the proposed facilities as hereinbefore described, and to sell natural gas under Rate Schedules DI–2 and I–2, all as more fully described in the application in this proceeding.

(B) The certificate issued by paragraph (A) above and the rights granted therunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The rate schedules authorized in paragraph (A) above are conditioned upon the outcome of the rate proceeding in Docket No. G–13202, and thereinafter subject to change.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP63–240

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued May 14, 1963)

On February 25, 1963, El Paso Natural Gas Company (Applicant) filed in Docket No. CP63–240 an application pursuant to Section 7(b) of the Natural Gas Act for authority to abandon and remove certain facilities located at the Weiner Floyd and Pembrook Plants in Spraberry Field, Glasscock and Upton Counties, Texas. The facilities consist of approximately 1.4 miles of 10¾ inch pipeline extending from Union Texas Petroleum's Weiner Floyd Plant in Glasscock County to a point of connection with Applicant's 30-inch Midriff to Spraberry junction pipeline; together with a purchase meter station located at the outlet of the Weiner Floyd Plant and a purchase meter station located at the outlet of the Pembrook Plant in Upton County.

Applicant states that due to the decline in production of casinghead gas in the Spraberry Field, deliveries of residue gas have been discontinued at the plants above-named and the facilities are of no use in their locations and their removal will not affect the operations of Applicant's natural gas pipeline system.

The value of the salvagable materials is $26,688 and the estimated cost of removing such facilities is $10,700.

Pursuant to due notice, a public hearing was held in Washington, D.C., on May 1, 1963, respecting the matters involved in and the issues presented by the application. No petition to intervene or protest to the granting of the application has been received. Staff Counsel, moved orally at the hearing that the intermediate decision procedure be omitted and the commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a natural gas company within the meaning of the Natural Gas Act and the facilities above described are parts of its interstate pipeline system, as more fully described in the application, and subject to the jurisdiction of the Commission.

(2) Deliveries of residue gas were discontinued to the Applicant at the Weiner Floyd Plant in May 1958 and at the Pembrook Plant in March 1962, due to depletion of casinghead gas in the Spraberry Field above-mentioned; therefore the public convenience and necessity does not require the maintenance or operation of the facilities installed.

(3) The abandonment and removal of the facilities will not affect public convenience and necessity.

(4) A request made during the public hearing by Staff Counsel for the omission of the intermediate decision procedure under Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure was unopposed by any party of record, and not having been denied by the Commission is granted pursuant to Section 1.30(c)(1) of the said rules.

The Commission orders:

Applicant be and is hereby permitted to abandon, dismantle and remove the facilities hereinbefore described, all as more fully described in the application.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP63-242

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued May 14, 1963)

On February 27, 1963, El Paso Natural Gas Company (Applicant), filed in Docket No. CP63-242 an application pursuant to Section 7(b) of the Natural Gas Act for authority to abandon a main line tap and appurtenances thereto located on Applicant's 22-inch Northwest Division in Caribou County, Idaho.

The facilities to be abandoned are used for the delivery and sale of natural gas to Intermountain Gas Company for resale to irrigation customers; but the said customers will continue to be served without the use of the tap and appurtenances above described.

The cost of the facilities was $314 and they will be removed by Applicant.

Pursuant to due notice a public hearing was held in Washington, D.C., on May 1, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene and oppose or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, is a natural gas company within the meaning of the Natural Gas Act and the facilities above are parts of its interstate pipeline system and subject to the jurisdiction of the Commission.

(2) Deliveries and sale of natural gas to Intermountain Gas Company for resale to irrigation customers will not be affected by the abandonment of the mainline tap facilities, above described, because natural gas can and will be delivered by the Applicant at another point on its system. Therefore the public convenience and necessity do not require the maintenance and operation of the facilities sought to be abandoned.

(3) A request made during the public hearing by Staff Counsel for the omission of the intermediate decision procedure under Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure was unopposed by any party of record, and not having been denied by the Commission is granted pursuant to Section 1.30(c)(1) of the said rules.

The Commission orders:

Applicant be and is hereby permitted to abandon, dismantle and remove the facilities hereinbefore described, all as more fully described in the application.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

HOPE NATURAL GAS COMPANY, DOCKET NO. CP63-225

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 14, 1963)

On February 14, 1963, Hope Natural Gas Company (Applicant) filed in Docket No. CP63-225 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 2.9 miles of 12-inch pipeline in order to connect two of its existing pipelines, H-45 and H-57 in Doddridge County, West Virginia. The construction of the proposed facilities will make it unnecessary to overload Hope's Cabot and Craig Compression Stations and line H-57. At present these facilities are being overloaded in an unsafe manner. Under the proposal, a portion of the gas now compressed at Cabot and Craig and transported through line H-57 will be diverted into larger and greater capacity pipelines, thus permitting a reduction in pipeline pressures at both stations and on line H-57. As a result of the reduction in pipeline pressure at both compressor stations there will be a reduction in required horsepower which will permit operation of the engine units at Cabot and Craig Stations within the manufacturer's rated horsepower.

The total estimated cost of the proposed facilities is $189,000 to be financed from funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on April 30, 1963, respecting the matters involved in and the issues presented by the application herein. No petitions to intervene or protests to the granting of the application have been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Hope Natural Gas Company, is "a natural gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of May 26, 1942, in Docket Nos. G-100 and 101 (3 FPC 151).

(2) The facilities hereinbefore described, all as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Hope Natural Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulation.

(C) Applicant shall complete the authorized facilities and place them in operation within 6 months from the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CITY OF MONTICELLO, GEORGIA, DOCKET NO. CP63-156

ORDER AMENDING ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALES OF NATURAL GAS

(Issued May 14, 1963)

On April 10, 1963, the City of Monticello, Georgia (Applicant) filed a motion to amend the Commission's order issued April 4, 1963, 29 FPC 708, in the above-entitled matter to delete therefrom the limitation of annual volumes to be delivered as hereinafter described and as more fully set forth in said motion.

The order of the Commission issued in the above-entitled matter directed Southern Natural Gas Company (Southern) to establish physical connection of its facilities with applicant's proposed facilities and to deliver and sell natural gas "in volumes required but not to exceed 1106 Mcf per day and 107,985 Mcf in any year".

Applicant states that Southern is ready, able and willing to enter a service agreement with applicant but that Southern's tariff on file with the Commission does not provide for any annual volume limitation. Moreover Southern has stated that it is its policy to provide service as requested by its resale customers as evidenced by service agreement and that a limitation of volumes in a certificate order would necessitate constant revisions of certificates or orders before the Commission.

In further support of the motion, Applicant cites the Commission's opinion and order issued August 7, 1959, in Docket No. G-14587 (22 FPC 211) in which

the Commission recognizes the unique character of Southern's system and the examiner's decision in G–1907 (12 FPC 516 at 532) which stated:

> Southern which has operated in the same general territory since prior to the passage of the Natural Gas Act has not heretofore been limited by certificate provisions in respect to the volume of gas it may sell to any customer nor has it been required to make available any specified volume of gas to any customer.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order of the Commission issued on April 4, 1963, in Docket No. CP63–156 be amended as hereinafter ordered.

The Commission orders:

(A) Paragraph (A) of the Commission's order issued April 4, 1963, in Docket No. CP63–156 is amended by deleting the words: "in volumes required but not to exceed 1106 Mcf per day and 107,985 Mcf in any year", and to substitute in lieu thereof the following: "for natural gas service as set forth in the application".

(B) In all other respects, said order shall remain unchanged and in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP62–226

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 14, 1963)

On March 19, 1962 Natural Gas Pipeline Company of America (Applicant) filed an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition, construction and operation of facilities for the receipt of natural gas to be purchased in the Sejita Field, Duval County, Texas, from Standard Oil Company of Texas, a division of California Oil Company (Standard).

The application states that Applicant proposes to acquire by purchase from Pasotex Pipe Line Company, a wholly-owned subsidiary of Standard, at a total cost of $492,242.12, a 10-inch pipeline extending 19.79 miles from the Sejita Field, Duval County, Texas, to a terminus near the main transmission pipeline of Applicant in Jim Wells County, Texas, including metering and other facilities appurtenant thereto. The terminus of said 10-inch pipeline is 2.67 miles east of the intersection thereof with Applicant's existing 26-inch pipeline at a point near the La Gloria Field in Jim Wells County, Texas. Applicant proposes to tie in said 10-inch pipeline with its existing 26-inch pipeline at the point of intersection and will operate the 17.12 miles of 10-inch pipeline for the receipt into the pipeline of gas purchased by it in the Sejita Field. The remaining 2.67 miles of 10-inch pipeline will be held by Applicant for future use. Applicant also proposes to construct a tap at a cost of $2,900. Temporary authorization to acquire, construct and operate the proposed facilities was granted on June 1, 1962.

Pursuant to due notice, a public hearing was held in Washington, D.C., on April 30, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation with its principal place of business at Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon the Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (d), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

A certificate of public convenience and necessity be and the same is hereby issued, upon the terms and conditions of paragraph (5) of the Commission's findings, authorizing Applicant, Natural Gas Pipeline Company of America, to acquire, construct and operate the proposed facilities as hereinbefore described, and as more fully described in the application in this proceeding.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-102

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 14, 1963)

On October 22, 1962, as supplemented on December 26, 1962, Northern Natural Gas Company (Applicant) filed in Docket No. CP63-102 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange and delivery of up to 50,000

Mcf of natural gas per day to El Paso Natural Gas Company (El Paso), all as more fully set forth in the application.

Applicant and El Paso are presently exchanging 475,000 Mcf of natural gas per day in accordance with El Paso's FPC Rate Schedule Z–1 now on file with the Commission. Certificate authority for such exchange has been received by Applicant and El Paso from time-to-time. Pursuant to the exchange, Applicant delivers gas principally at a point of interconnection at the outlet of its Plains measuring station located in Yoakum County, Texas, while El Paso returns equal volumes to Applicant principally at an interconnection at the outlet of El Paso's Dumas Compressor Station in Moore County, Texas.

Applicant and El Paso have entered into a new agreement dated August 17, 1962, providing for the exchange of 525,000 Mcf per day at 14.65 Psia which means an increase in the amount of 50,000 Mcf of natural gas per day and for which Applicant now seeks authority. The agreement further provides that the additional gas may be delivered by El Paso at a point in Beaver County, Oklahoma and at several points in Ochiltree County, Texas. Applicant does not propose to increase its salable capacity nor does it propose any additional sales as a result of this application.

El Paso has filed with the Commission an application in Docket No. CP63–63 seeking a certificate of public convenience and necessity to construct certain additional facilities and to deliver exchange volumes to Applicant in accordance with the agreement dated August 17, 1962.

Pursuant to due notice a public hearing was held in Washington, D.C., on May 1, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation with its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The proposed exchange and delivery of natural gas by Applicant hereinbefore described, as more fully described in the application in this proceeding, will be in interstate commerce, subject to the jurisdiction of the Commission, and such proposed exchange and delivery are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The exchange and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the right granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record

and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to exchange and deliver natural gas to El Paso Natural Gas Company as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), and (e) of Section 157.20 of such Regulations.

(C) The exchange and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which an order is issued to El Paso Natural Gas Company granting a certificate of public convenience and necessity in Docket No. CP63–63 authorizing the delivery of exchange volumes of natural gas on the part of that company to Northern Natural Gas Company in accordance with their agreement dated August 17, 1962.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP63–208

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 14, 1963)

On January 16, 1963, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP63–208 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of regular equipment on an existing transmission pipeline, and of 6.5 miles of new 4-inch pipeline, all as more fully set forth in the application.

Applicant proposes to construct a regulator in its existing measuring and regulating station in Section 34, Township 47 North, Range 24 West, together with 6.5 miles of 4-inch pipeline to connect with its existing Windsor lateral line near Whiteman Air Base, all of which are located in Johnson County, Missouri. Applicant now delivers natural gas through its Windsor lateral line to The Gas Service Company (Gas Service) for resale to the town of Windsor. Pursuant to an exchange agreement, Cities Service Gas Company (Cities) delivers natural gas to Applicant where its Windsor lateral intersects with Cities line near Whiteman Air Base for the purpose of resale to Gas Service.

The Commission in Docket No. CP60–86 issued an order dated August 19, 1960, 24 FPC 309 approving a plan whereby the above-mentioned exchange agreement could be terminated by step reductions in deliveries with a final delivery on February 29, 1964, and in addition Applicant would seek authority to construct the necessary line and regulator in order to continue service to Gas Service. Construction is proposed for the Summer or Fall of 1963 with initial service to begin on March 1, 1964. Applicant and Cities plan to retain

the existing interconnection for emergency purposes only after termination of the exchange deliveries.

The estimated total cost of construction is $119,000 to be financed from cash on hand by Applicant.

Pursuant to due notice, a public hearing was held in Washington, D.C., on April 30, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having a principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefore should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Panhandle Eastern Pipe Line Company, to construct and operate the natural gas facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP63-154

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued May 14, 1963)

On December 5, 1962, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP63-154 an application supplemented on February 1, 1963, pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Western Kentucky Gas Company (Western) certain facilities consisting of approximately 29.08 miles of various sized pipeline and two meter stations with appurtenances.

Applicant states that the facilities just mentioned are being used solely for service to Western and that Western desires to utilize such facilities as a part of its distribution system.

Such use by Western of the facilities will not affect applicants' operations and Western will pay $25,000 for the same.

Pursuant to due notice, a public hearing was held in Washington, D.C., on April 29, 1963 respecting the matters involved in and the issues presented by the application, as supplemented. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and the Commission render a decision pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a natural gas company within the meaning of the Natural Gas Act and the facilities herein sought to be abandoned are facilities subject to the jurisdiction of the Commission.

(2) Public convenience and necessity do not require the continued operation and maintenance of the facilities hereinbefore described. Therefore approval of the abandonment proposed by the applicant should be allowed.

(3) A request made during the public hearing by Staff Counsel for the omission of the intermediate decision procedure under Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure was unopposed by any party of record, and not having been denied by the Commission is granted pursuant to Section 1.30(c)(1) of the rules.

The Commission orders:

(A) Applicant be and is hereby permitted to abandon the operation of the facilities heretofore described and in the manner as more fully described in the application as supplemented.

(B) Applicant shall advise the Commission within 30 days of the settlement with Western Kentucky Gas Company.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP63-182

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 14, 1963)

On December 26, 1962, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP63-182 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 3.5 miles of 2-inch pipeline, and one metering station in St. Marys Parish, Louisiana, all as more fully set forth in the application.

The proposed facilities will be used to transport natural gas, for the account of Hope Natural Gas Company (Hope), to be purchased by Hope from Humble Oil and Refining Company (Humble) in the Charenton Field which is located in St. Mary Parish. The transportation for the account of Hope will be rendered under the certificate issued to Applicant on August 10, 1959, in Docket No. G-17335 and will not involve any change in the presently authorized maximum transportation obligation of Applicant of 100,000 Mcf of natural gas per day. The rate to be charged for such transportation will be as provided in Rate Schedule X-21 contained in Applicant's FPC Gas Tariff, Original Volume No. II.

The total cost of the proposed facilities is estimated at $50,390 for which Applicant will be reimbursed in full by Humble.

Applicant informed the Commission by letter dated February 25, 1963, that the proposed authorized construction sought in this application was completed on February 22, 1963, pursuant to temporary authorization issued February 20, 1963.

Pursuant to due notice a public hearing was held in Washington, D.C., on May 7, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefore should be issued as hereinafter ordered and conditioned.

737-369—64——61

(5) Public convenience and necessity requires that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Texas Gas Transmission Corporation, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TRUNKLINE GAS COMPANY, DOCKET NO. CP63-215; MICHIGAN GAS STORAGE COMPANY, DOCKET NO. CP63-221

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 14, 1963)

On January 30, 1963, Trunkline Gas Company (Trunkline) filed in Docket No. CP63-215 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the sale and delivery of an additional 25,000 Mcf of natural gas per day to Consumers Power Company (Consumers), an existing customer, and the sale and delivery of an additional 4,941 Mcf of natural gas per day to twelve other existing customers in Kentucky, Illinois, Indiana and Tennessee, all as more fully set forth in the application.

Specifically, Trunkline proposes to construct and operate:

(1) 3,000 additional horsepower at each of the following existing main line compressor stations:
   (a) Station No. 48, Longville, Louisiana
   (b) Station No. 66, Epps, Louisiana
   (c) Station No. 84, Independence, Mississippi
   (d) Station No. 103, Joppa, Illinois

(2) Two additional river crossings at:
   (a) the Ouachita River, Caldwell Parish, Louisiana, such crossing to consist of two 30-inch O.D. lines, and,
   (b) the Ohio River near Joppa, Illinois, such crossing to consist of one 30-inch O.D. line.

Trunkline states that the estimated cost of the proposed facilities is $5,600,000, which cost will be financed from funds on hand.

The application indicates that with the construction of the proposed facilities, Trunkline's system design capacity would be increased to 830,000 Mcf.

Trunkline is presently authorized to sell up to 150,000 Mcf of natural gas per day to Consumers. Trunkline states that under the agreement between it and Consumers, as amended, it is contemplated that on October 1, 1963, the contract demand for Consumers will increase by 25,00 Mcf per day.[1] The subject sale of natural gas to Consumers is made at the Indiana-Michigan border.

The proposed sale to Consumers will be made under Trunkline's FPC Gas Rate Schedule P–2 and the proposed sales to the twelve other existing customers will be made under Trunkline's FPC Gas Rate Schedules SG–1 and SG–2.

On February 11, 1963, Michigan Gas Storage Company (Storage) filed in Docket No. CP63–221 an application pursuant to Section 7(c) of the Natural Gas Act authorizing the transportation and delivery, by means of existing facilities, natural gas for and on behalf of Consumers, all as more fully set forth in the application.

Storage states that the Trunkline gas supply is received by Consumers and is transmitted to and throughout Consumers' service area in Michigan utilizing the facilities of Consumers and Storage. Storage states further that it is advised by Consumers that the proposed increased deliveries in Docket No. CP63–215 to the latter by Trunkline, as well as the further increase of 25,000 Mcf per day in the fall of 1964 which is not covered in Docket No. CP63–215, will also be marketed and transmitted in the same manner. Storage is presently authorized to transport for Consumers a portion of the gas received by Consumers from Trunkline and requests herein the necessary authorization to transport any increased deliveries which may be authorized by the Commission.

Pursuant to due notice, a public hearing was held in Washington, D.C., on May 7, 1963, respecting the matters involved in and the issues presented by the applications in these proceedings. A number of petitions to intervene has been filed in these proceedings as well as a notice of intervention by the Michigan Public Service Commission in Docket No. CP63–215. In all cases, the burden of such filings has been that the petitioners did not request formal hearing in these proceedings and did not object to the hearing and disposition of the subject applications under the shortened procedure provided for by the Commission's Rules, but that each petitioner desired to preserve its rights to appear and participate fully in the event that these matters should be set for formal hearing. Inasmuch as the abridged hearing procedure is being used herein, no further action on the various intervention petitions and notice appears necessary.

No protests to the granting of the application having been received, and no other appearances having been entered at the hearing, staff counsel moved orally that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G–882 (8 FPC 250).

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[1] A further increase of 25,000 Mcf per day, beginning in the fall of 1964 is contemplated by said agreement, but such increase is not covered by the subject application.

(2) Applicant, Michigan Gas Storage Company, a Michigan corporation having its principal place of business in Jackson, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 3, 1946, in Docket No. G–731 (5 FPC 965).

(3) The facilities hereinbefore described, as more fully described in the application in Docket No. CP63–215, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sales of natural gas by Trunkline are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The transportation and delivery of natural gas hereinbefore described, as more fully described in the application in Docket No. CP63–221, are to be in interstate commerce, subject to the jurisdiction of the Commission, and such transportation and delivery of natural gas by Storage are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Trunkline and Storage are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) The construction and operation of the proposed facilities and the proposed sales of natural gas by Trunkline and the proposed transportation and delivery of natural gas by Storage and are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(7) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and, with respect to Trunkline, particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations, and, with respect to Storage, particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), and (e) of Section 157.20 of such Regulations.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Trunkline Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in Docket No. CP63–215, upon the terms and conditions of this order.

(B) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Michigan Gas Storage Company, to transport and deliver up to 200,000 Mcf of natural gas per day for Consumers Power Company, as hereinbefore described, all as more fully set forth in the application in Docket No. CP63–221, upon the terms and conditions of this order. The certificate authorizing said transportation and delivery is hereby made subject to the condition that said transportation and delivery require no additional facilities.

(C) The certificates issued by paragraphs (A) and (B) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and, with respect to Trunkline, particularly the general terms and conditions set forth in paragraphs

(a), (b), (c)(1), (c)(2), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations, and, with respect to Storage, particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), and (e) of Section 157.20 of such Regulations.

(D) The facilities hereby authorized in Docket No. CP63–215 shall be constructed and placed in actual operation and the sales of natural gas authorized in paragraphs (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

(E) The transportation and delivery of natural gas authorized in Docket No. CP63–221 and in paragraph (B) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP63–233

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued May 14, 1963)

On February 15, 1963, United Gas Pipe Line Company (Applicant) filed in Docket No. CP63–233 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval of the Commission to abandon and remove a positive meter and regulator station and appurtenant facilities serving Dunaway Manufacturing Company, located at Milepost 36.32 on the Latex-Ft. Worth main line in Alexander Gordon Survey, Abstract 360, Harrison County, Texas.

Applicant states that it has been selling gas to the customer named above for use in its operation of aluminum door and windows manufacturing plant in Harrison County, Texas. The contract for such service terminated on March 1, 1963 and the service ended thus rendering the facilities of no more use at their present location.

The original cost of the above described facilities was $1,506.73.

Pursuant to due notice, a public hearing was held in Washington, D.C., on April 30, 1963, respecting the matters involved in and the issues presented by the application. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a "natural gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) The facilities sought to be abandoned and removed by Applicant are no longer required to render service to the customer heretofore being served by it and the public convenience and necessity does not require the continued maintenance or operation thereof.

(3) A request made during the public hearing by Staff Counsel for the omission of the intermediate decision procedure under Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure was unopposed by any party of

record, and not having been denied by the Commission is granted pursuant to Section 1.30(c)(1) of said rules.

The Commission orders:

(A) Applicant be and is hereby permitted to abandon and remove the facilities heretofore described, as more fully described in the application.

(B) Applicant shall advise the Commission in writing of the date of removal of the facilities within 10 days thereafter.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

J. RAY MCDERMOTT & COMPANY, INC. (OPERATOR), ET AL., DOCKET NOS. G-19758, RI61-105, AND RI62-197

ORDER ACCEPTING OFFER OF SETTLEMENT REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, REQUIRING REFUNDS, AND TERMINATING PROCEEDINGS

(Issued May 15, 1963)

On September 30, 1959, J. Ray McDermott & Company, Inc. (Operator), *et al.* (McDermott) tendered for filing a notice of change in its presently effective FPC Rate Schedule No. 11, covering the jurisdictional sale of natural gas to Texas Eastern Transmission Corporation (Texas Eastern), from the May Field, Kleberg County, Texas (Texas Railroad Commission District No. 4). By order issued October 23, 1959, in Docket No. G-19758, the proposed increased rate of 14.8¢ per Mcf at 14.65 psia, designated as Supplement No. 4 to McDermott's FPC Gas Rate Schedule No. 11, was suspended until April 1, 1960, when, upon proper motion, it became effective subject to refund.

On September 12, 1960, McDermott tendered for filing another notice of change in the aforementioned rate schedule. By order issued September 29, 1960, in Docket No. RI61-105, the proposed increased rate of 15.0¢ per Mcf at 14.65 psia, designated as Supplement No. 5 to McDermott's FPC Gas Rate Schedule No. 11, was suspended until April 1, 1961, when, upon proper motion, it became effective subject to refund.

On November 3, 1961, McDermott tendered for filing a third notice of change in the aforementioned rate schedule. By order issued December 1, 1961, in Docket No. RI62-197, the proposed increased rate of 15.2¢ per Mcf at 14.65 psia, designated as Supplement No. 6 to McDermott's FPC Gas Rate Schedule No. 11, was suspended until May 4, 1962, when, upon proper motion, it became effective subject to refund.

On April 11, 1963, McDermott submitted an Offer of Settlement in the above-designated proceedings, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure.

Under the terms of the offer, McDermott proposes to delete the favored-nation and periodic escalation provisions from the rate schedule involved, and to substitute therefor a revised schedule of 1¢ per Mcf escalations at five-year intervals, commencing November 1, 1963. McDermott proposes to establish a settlement rate of 14.6¢ per Mcf, inclusive of present tax reimbursement. Further, McDermott proposes to refund to Texas Eastern all monies collected in excess of 14.6¢ per Mcf in these proceedings.

In support of its offer, McDermott cites the deletion of the favored-nation and periodic escalation provisions from its gas purchase contract with Texas

Eastern and states that such provisions were important elements of consideration required by McDermott under the contract for the long-term commitment of its gas reserves to the performance of the contract. Texas Eastern has concurred in the offer and has agreed to execute the contract amendment provided for therein. No protests have been received from any of the interveners in these proceedings.

Since the proposed settlement rate of 14.6¢ per Mcf at 14.65 psia is acceptable under the provisions of the Second Amendment[1] to the Commission's Statement of General Policy No. 61–1,[2] for jurisdictional sales of natural gas in Texas Railroad Commission District No. 4, it is believed that the public interest will best be served by accepting McDermott's proposed settlement as hereinafter set forth. The proposed settlement rate should be made effective as of the date of issuance of this order.

However, we desire to make it clear that acceptance of the Offer of Settlement shall not be construed as approval of any future increased rate proposed by McDermott.

The Commission finds:

The proposed settlement of the above-designated proceedings, on the basis described herein, as more fully set forth in the Offer of Settlement filed by McDermott with the Commission on April 11, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by McDermott with the Commission on April 11, 1963, is hereby approved in accordance with the provisions of this order.

(B) McDermott shall file, within 30 days from the date of issuance of this order a notice of change providing for the 14.6¢ per Mcf settlement rate and a contractual amendment to its FPC Gas Rate Schedule No. 11, which McDermott shall execute with Texas Eastern in conformity with McDermott's Offer of Settlement in all respects. Both the notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Within 30 days from the date of issuance of this order, McDermott shall refund to Texas Eastern all amounts collected under its FPC Gas Rate Schedule No. 11, in Docket Nos. G–19758, RI61–105, and RI62–197, in excess of the settlement rate of 14.6¢ per Mcf, together with simple interest at the rate of 7% per annum, from the date of receipt of such excess amounts by McDermott to the date of refund. McDermott shall bear all costs incidental to the making of such refunds.

(D) Within 45 days from the date of issuance of this order, McDermott shall report to the Commission in writing and under oath, the details of its calculations resulting in refunds ordered pursuant to paragraph (C) above, together with a copy of a release from Texas Eastern with respect to such refunds.

(E) Upon notification by the Secretary of the Commission that McDermott has complied with the terms and conditions of this order, the rate and charge of 14.6¢ per Mcf, including present tax reimbursement, specified in the Offer of Settlement, shall be effective as of the date of issuance of this order, the

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[1] Issued December 20, 1960, 24 FPC 1107; amended by Order No. 264, in Docket No. R–234, issued March 27, 1963, 29 FPC 589.

[2] Issued September 28, 1960, 24 FPC 818 (18 CFR, Chapter I, Part 2, Section 2.56).

above-designated proceedings shall be deemed terminated, and McDermott's refund obligations with respect to the above-designated proceedings shall be deemed discharged.

(F) The acceptance of this Offer of Settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending or hereafter instituted by or against McDermott.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

KANSAS POWER AND LIGHT COMPANY

ORDER ACCEPTING RATE SCHEDULES FOR FILING, DIRECTING THE SUBMISSION OF DATA, AND DIRECTING STAFF INVESTIGATION

(Issued May 15, 1963)*

Kansas Power and Light Company (Kansas Power) of Topeka, Kansas, on September 20, 1962 and January 28, 1963, submitted for filing pursuant to Section 205 of the Federal Power Act: seventeen contracts for wholesale electric service to rural electric cooperatives served under Kansas Power's Schedule RC-3; twenty-five contracts for wholesale electric service to municipalities and one rural electric cooperative served under Kansas Power's Schedule MWH-2; seven contracts for interchange or wholesale electric service rendered to rural electric cooperatives, municipalities and other wholesale customers under other rates; and one supplemental contract providing for an additional delivery point to a rural electric cooperative customer. The proffered rate schedules are designated in the files of the Commission as set forth below.[1]

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[1] Rate schedule designation	Other party	Date of instrument
FPC No. 10	Ark. Valley Elec. Coop. Assn., Inc.	May 21, 1962
FPC No. 11	Brown-Atchison ECA, Inc.	May 21, 1962
Supp. No. 1	Delivery Point Sec. 3-T3S-R15E	Sep. 25, 1962
FPC No. 12	Butler Rural ECA, Inc.	May 14, 1962
FPC No. 13	C & W Rural ECA, Inc.	May 2, 1962
FPC No. 14	Central Kansas EC, Inc., Delivery Point—Claflin, Kans.	June 15, 1959
FPC No. 15	Coffey County REC, Inc.	May 21, 1962
FPC No. 16	Coop. Elec. Power & Lt. Co., Inc.	May 21, 1962
FPC No. 17	D.S. & O. Rural Eca, Inc. (Contract / Ltr. Agmt.)	May 21, 1962 / July 27, 1962
FPC No. 18	Doniphan ECA, Inc.	May 21, 1962
FPC No. 19	Flint Hills RECA, Inc.	May 21, 1962
FPC No. 20	Kaw Valley EC Co., Inc.	May 21, 1962
FPC No. 21	Leavenworth-Jefferson EC, Inc.	May 21, 1962
FPC No. 22	Lyon County EC, Inc.	April 24, 1962
FPC No. 23	Nemaha-Marshall ECA, Inc.	June 22, 1962
FPC No. 24	Ninnescah RECA, Inc.	May 21, 1962
FPC No. 25	P.R. & W. ECA, Inc.	May 21, 1962
FPC No. 26	Smoky Hill ECA, Inc.	May 21, 1962
FPC No. 27	Twin Valley EC, Inc.	May 21, 1962
FPC No. 28	City of Alma	Jan. 7, 1958
FPC No. 29	City of Altamont	Mar. 7, 1960
FPC No. 30	City of Axtell	Sep. 2, 1955
FPC No. 31	City of Centralia	Jan. 8, 1958
FPC No. 32	City of Chapman	Oct. 3, 1960
FPC No. 33	City of Desoto	Mar. 2, 1961
FPC No. 34	City of Elwood	Aug. 5, 1958
FPC No. 35	City of Enterprise	Sep. 12, 1960
FPC No. 36	City of Eudora	Nov. 28, 1960
FPC No. 37	City of Goff	Jan. 6, 1960
FPC No. 38	City of Muscotah	Jan. 4, 1960
FPC No. 39	City of Netawaka	Jan. 4, 1960
FPC No. 40	City of Oswego	Apr. 19, 1960

Continued, p. 927.

*Rehearing granted July 16, 1963.

Prior to the submission of rate schedules for filing, Kansas Power from time to time had filed with this Commission other rate schedules for wholesale electric service to Kansas City Power and Light Company, Omaha Public Power District, Kansas Gas and Electric Company, Missouri Public Service Company, and Empire District Electric Company.[2]

Kansas Power's Schedule RC–3, applicable to service to rural electric cooperatives for resale to consumers in rural areas of Kansas, contemplates that the purchaser's entire electric requirements will be supplied by Kansas Power for a minimum period of five years. "Rural areas", as defined in the schedule, include incorporated communities of less than 200 population at the time service was begun. Kansas Power's monthly charge for each delivery point includes $2.60/kw of billing demand including 300 kwh/kw, 5.5 mills/kwh in excess of 300 kwh/kw, a minimum monthly charge for each point of delivery, and a fuel cost adjustment provision based upon 1¢ changes in a stated base fuel cost of 21.4¢/million Btu.[3]

Kansas Power's Schedule MWH–2, applicable to service to municipalities which contract to purchase their entire requirements from the company for a minimum period of five years, includes a demand charge of $80.00 for the first 25 kw of billing demand, $2.25/kw for the next 25 kw, $1.25/kw for the next 50 kw, $1.00/kw for the next 400 kw and $0.75/kw for excess over 500 kw, an energy charge of 1¢/kwh for the first 150 kwh/kw of billing demand plus 0.6¢ for all additional kwh, and a fuel cost adjustment provision based upon 1¢ changes above 17¢/million Btu or below 15¢/million Btu base fuel costs.

The remainder of the proffered rate schedules submitted by Kansas Power provide for various classes of service, including firm power sales, emergency

Footnote 1 continued.

Rate schedule designation	Other party	Date of instrument
FPC No. 41	City of Reserve	Jan. 1, 1962
FPC No. 42	City of Robinson	Mar. 3, 1961
FPC No. 43	City of St. Marys	Oct. 7, 1957
FPC No. 44	City of Scranton	Apr. 1, 1958
FPC No. 45	City of Seneca	Nov. 6, 1959
FPC No. 46	City of Severance	Feb. 15, 1960
FPC No. 47	D.S. & O. Rural ECA, Inc., Delivery Point—City of Solomon.	Feb. 1, 1958
FPC No. 48	City of Toronto	Mar. 4, 1960
FPC No. 49	City of Troy	June 2, 1953
FPC No. 50	City of Vermillion	Feb. 4, 1958
FPC No. 51	City of Waterville	June 12, 1958
FPC No. 52	City of Wathena	Apr. 21, 1953
FPC No. 53	Western Lt. & Tel. Co.	Apr. 20, 1959
FPC No. 54	Central Kansas EC, Inc.	Apr. 18, 1955
FPC No. 55	Bowersock Mills & Power Co.	June 28, 1932
FPC No. 56	City of Herington	Jan. 23, 1956
FPC No. 57	City of Larned	Nov. 4, 1957
FPC No. 58	Dick Delaney	Jan. 21, 1960

[2] These are designated in the files of the Commission as: FPC No. 1: Kansas Gas and Electric Company, dated 5–15–59, and Supplements Nos. 1–6 thereto, dated 5–18–60, 7–15–61, 7–20–61, 7–20–61, 3–20–62, and 3–30–62 respectively; FPC No. 2: Kansas City Power & Light Company, dated 4–24–62; FPC No. 3: The Omaha Public Power District, dated 6–25–62; and FPC No. 7, and interconnection and pooling agreement with Missouri Public Service Company, Kansas City Power & Light Company, Empire District Electric Company, and Kansas Gas and Electric Company, dated 3–31–62.

[3] Kansas Power bills the D.S.&O. Rural Electric Cooperative Association at its Solomon Kansas delivery point at the Company's MWH–2 rate.

service and standby service. These schedules contain various demand and/or energy rates and different fuel adjustment provisions.[4]

Examination of the proffered rate schedules and the differentials in Kansas Power's rates and charges, including its fuel cost adjustments and service conditions, indicates the need for further analysis thereof. Those and other matters bearing upon Kansas Power's rate level and rate design make it desirable, in the interests of all consumers served by or through Kansas Power, that the Commission staff conduct an investigation and study of Kansas Power's electric utility operations, system costs, and rates and charges subject to this Commission's jurisdiction pursuant to the Federal Power Act.

It is anticipated that the Commission staff investigation as to Kansas Power's rates and charges and of Kansas Power's overall utility operations and systems costs will require the submission by Kansas Power of cost, revenue, and other operating data, and that such data will be requested by the staff or obtained by the staff through field studies. This Commission's rate regulatory jurisdiction over Kansas Power is continuous. The information to be made available by Kansas Power will afford the Commission a basis upon which to consider the need for any additional action relative to Kansas Power's services and rates and charges therefor.

We note that certain of the aforementioned rate schedules provide for increased charges in the event that any tax or assessment is made upon Kansas Power based on energy sales or revenue. Under the Commission's Regulations under the Federal Power Act, Section 35.3(c), the invocation of any such provisions must be preceded by appropriate supplemental rate schedule filings.

The Commission further finds:

It is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206, 307 and 309 thereof, that the rate schedules set

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[4] FPC No. 53 embodies a 5 year contract, continuing thereafter and terminating on 24 months notice, with Western Light and Telephone Company for emergency service interchanges and firm power sales to and from each company. The emergency service rate consists of a demand charge of 7¢/kw for each day's required service, plus 5 mills/kwh for all energy delivered. The firm power rate includes a monthly demand charge of $1.50/kw of maximum 60 minute demand at each delivery point, an energy charge of 5 mills per kwh for all energy delivered and a fuel adjustment provision of 0.15 mills/kwh for each 1¢ by which the average cost of fuel burned exceeds 21¢ or is less than 19¢ per million Btu.

FPC No. 54 embodies two 3 year contracts, extended thereafter on a year to year basis, with Central Kansas Electric Cooperative for emergency service and firm power sales between the parties. All power supplied by either party is billed at a monthly rate at each delivery point of 5¢/kw per day, not to exceed $1.25/kw of maximum demand per month, plus 6.5 mills/kw.

FPC No. 55 embodies a contract with Bowersock Mill & Power Company under which Kansas Power purchases surplus energy and supplies standby. The net balance of monthly exchanges is billed during on-peak periods at 12.5 mills/kwh for the first 200,000 kwh, 10 mills/kwh for the next 60,000 kwh and 7.5 mills/kwh thereafter; during off-peak periods, at 5 mills/kwh.

FPC Nos. 56 and 57 embodies two emergency interconnection and service contracts with the Cities of Herington and Larned, Kansas. Emergency service is billed to the receiving party at a rate of 5¢/kw per day, not to exceed $1.25/kw of maximum demand per month, plus 6.5 mills/kwh, subject to a fuel cost adjustment of 0.13 mills/kwh for each 1¢ by which the average cost of fuel burned in Kansas Power's steam generating plants in any month exceeds 21¢ per million Btu. There is also a fuel adjustment for purchases by Kansas Power.

FPC No. 58 embodies a contract with Dick Delaney, operator of an electric distribution system selling power at retail to ultimate consumers in the City of Leona, Kansas. Kansas Power supplies the entire load requirements at a rate 10% higher than Kansas Power's Schedule MWH–2.

forth in the recitals above be accepted for filing; that the Commission staff conduct an investigation and study as set forth above; and that Kansas Power be directed to submit, or otherwise make available, cost, revenue, and other operating data pursuant to the staff's request therefor.

The Commission orders:

(A) The proffered rate schedules referred to in this order are accepted for filing and allowed to take effect as of October 1, 1962, with the exception of Supplement No. 1 to FPC No. 11, which is accepted for filing to take effect as of February 28, 1963.

(B) Kansas Power shall submit to the Commission staff at the Commission's office or at the Company's offices, cost, revenue and other operating data as may be requested by the Commission's staff in carrying out the investigation directed herein.

(C) This order is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Kansas Power.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MONTEREY GAS TRANSMISSION COMPANY, DOCKET NO. CP62–88; COLUMBIA GULF TRANSMISSION COMPANY, CP62–89; UNITED FUEL GAS COMPANY, CP62–90; THE OHIO FUEL GAS COMPANY, CP62–91; TENNESSEE GAS TRANSMISSION COMPANY, CP62–291

ORDER ALLOWING WITHDRAWAL OF APPLICATIONS AND SEVERING DOCKETS FROM CONSOLIDATED PROCEEDING

(Issued May 15, 1963)

On April 9, 1963, Monterey Gas Transmission Company (Monterey) filed in Docket No. CP62–88 a notice of withdrawal of its application for a certificate of public convenience and necessity filed October 9, 1961, as amended January 8, 1962, and June 5, 1962, and a request for cancellation of the oral argument which had been scheduled in the above-entitled consolidated proceeding for May 2, 1963.[1]

On April 18, 1963, Tennessee Gas Transmission Company (Tennessee) filed in Docket No. CP62–291 a "Notice of Withdrawal of Application for Authority to Abandon Facilities and for Certificate of Public Convenience and Necessity", stating that Tennessee's application in Docket No. CP62–291 was a "companion application" to Monterey's application in Docket No. CP62–88.

Three Columbia Gas System companies[2] filed on April 9, 1963, a joint statement in which they refer to the fact that temporary certificates have already been issued in Docket Nos. CP62–89, CP62–90, and CP62–91 and that the facilities authorized under such temporary certificates have been constructed in order to permit the Columbia Companies to render service to their existing customers during the past heating season. The Columbia Companies also state that United Fuel Gas Company (United Fuel) has negotiated an arrangement

[1] The oral argument scheduled for May 2, 1963, has heretofore been cancelled by "Notice of Cancellation of Oral Argument" dated April 12, 1963.

[2] Columbia Gulf Transmission Company, United Fuel Gas Company, and The Ohio Fuel Gas Company.

whereby Humble Oil & Refining Company (Humble) [2] will make available to United Fuel a supply of approximately 6.4 trillion cubic feet of gas from five or more fields in southern Louisiana within the framework of conventional gas purchase contracts and that it will be necessary to file a further amendment to the application of Columbia Gulf Transmission Company in Docket No. CP62–89 in order to obtain the authority to construct the facilities necessary to carry out the contemplated purchase of gas from Humble.

The Columbia Companies further allege that their applications in Docket Nos. CP62–89, CP62–90, and CP62–91 should not be considered moot because of the filing of Monterey's notice of withdrawal of its application in Docket No. CP62–88. The Columbia Companies therefore request that their applications in Docket Nos. CP62–89, CP62–90, and CP62–91 be severed from Docket No. CP62–88 and that action thereon be held in abeyance pending submission of additional fillings to be made on or about June 1, 1963, pursuant to the aforementioned negotiations related to the proposed purchase of gas from Humble.

The Commission finds:

It is appropriate in the administration of the Natural Gas Act that Monterey's and Tennessee's requests to withdraw their applications in Docket Nos. CP62–88 and CP62–291, respectively, be granted, and that such applications be severed from the Columbia Companies' applications in Docket Nos. CP62–89, CP62–90, and CP62–91, pending the subsequent filings to be made in the three dockets of the Columbia Companies as hereinbefore described.

The Commission orders:

(A) Monterey's application in Docket No. CP62–88 and Tennessee's application in Docket No. CP62–291 are hereby severed from the Columbia Companies' applications in Docket Nos. CP62–89, CP62–90, and CP62–91.

(B) Monterey Gas Transmission Company's request to withdraw its application filed October 9, 1961, as amended, in Docket No. CP62–88 is hereby granted, effective May 9, 1963, pursuant to Section 1.11(d) of the Commission's Rules of Practice and Procedure.

(C) Tennessee Gas Transmission Company's request to withdraw its application filed June 11, 1962, in Docket No. CP62–291 is hereby granted, effective May 18, 1963, pursuant to Section 1.11(d) of the Commission's Rules of Practice and Procedure.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PENNSYLVANIA POWER COMPANY, DOCKET NO. E–7087

ORDER AUTHORIZING SALE OF FACILITIES

(Issued May 15, 1963)

Pennsylvania Power Company (Applicant) incorporated under the laws of the Commonwealth of Pennsylvania, and doing business in Pennsylvania, with its principal business office at 19 East Washington Street, New Castle, Pennsylvania, filed an application on April 1, 1963, pursuant to Section 203 of the Federal Power Act, requesting authorization for it to sell to Sharon Steel Corporation, a corporation with its principal office located in the City of Sharon, Mercer

[2] Humble also filed a statement on April 9, 1963, referring to negotiation of "* * * an arrangement whereby Humble will make sales of gas to United Fuel from South Louisiana under a conventional gas sales contract."

County, Pennsylvania, under an agreement entered into on March 28, 1963, a certain substation located at Sharon Steel Corporation's plant at Farrell, Pennsylvania. This substation is used solely in rendering service at the steel plant.

Applicant is a wholly-owned subsidiary of Ohio Edison Company. It operates an electric system serving an area of approximately 1,500 square miles in western Pennsylvania adjacent to the area served by the parent company in Ohio. It is interconnected with the parent company at a number of points in the Ohio-Pennsylvania border by means of 138 kv, 69 kv, and 23 kv transmission facilities and, in 1961, received 349,272,000 kwh from and delivered 321,778,000 kwh to Edison. It is also interconnected with Duquesne Light Company in Pennsylvania. It supplies energy to four municipal systems in Pennsylvania.

The substation and related facilities to be sold includes a separate metering station, 2,979 feet of three-phase, steel tower, 138 kv, transmission line, and a 138/23 kv, 30/40 mva step-down substation. All necessary structures, wiring, busses, protection equipment, and switch gear are included in the transaction. The facilities are located on land owned by Sharon Steel Corporation and are used only to supply electric energy to electric furnaces of Sharon Steel. Other requirements of the steel plant have been furnished by Applicant over 69 kv facilities.

After purchase of the facilities, Sharon Steel will receive electric service for the furnaces at 138 kv instead of 23 kv and will be entitled to a 5 percent discount on demand and energy charges. Sharon Steel has also purchased equipment which will enable it to disconnect the existing 69 kv service and thus receive all other electric service at 138 kv. It will obtain a 1.5 percent reduction in the rates for electric service previously furnished at 69 kv. By sale of the facilities, Applicant will reduce its investment in plant and also the operating and maintenance costs for facilities used to serve only Sharon Steel.

The applicant proposes to sell the substation and related facilities for $290,000. According to the application, this amount was determined by arm's length negotiation as to what Sharon Steel would pay and the Applicant would accept and is considered by the Applicant to be a "fair price for such facilities."

The application indicates that the facilities are recorded on the books of the Applicant at original cost of $377,637.85, and they have an applicable accumulated provision for depreciation of $65,941.46, for a net amount of $311,696.39. From the sale of the facilities, the Applicant will realize net proceeds of $289,720, this amount being the consideration of $290,000, less estimated expenses of $280 in connection with the sale. The net proceeds of $289,720 will be $21,976.39 less than the net amount of plant of $311,696.39 and, therefore, the Applicant will have a loss of $21,976.39 on the sale of the facilities. The Applicant proposes to charge this loss to Account 426, Other Income Deductions.

Written notice of the application has been given to the Pennsylvania Public Utility Commission and to the Governor of that State and was also published in the Federal Register on April 13, 1963 (28 F.R. 3682) stating that any person desiring to be heard or to make any protest with reference to said application should on or before April 29, 1963, file with the Federal Power Commission, Washington 25, D.C., petitions or protests in accordance with the requirements of the Commission Rules of Practice and Procedure (18 C.F.R. 1.8 or 1.10). No petitions or protests or requests to be heard in opposition to the application have been received.

The Commission finds:

(1) Applicant, Pennsylvania Power Company is a corporation organized and existing under the laws of the State of Pennsylvania. It owns and operates facilities, among others, for the transmission and sale at wholesale of electric energy which is transmitted between the States of Pennsylvania and Ohio and

is consumed at points outside the State in which it is generated, all of which facilities are in addition to and do not include facilities used for the generation of electric energy, facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter. Applicant is, therefore, a public utility within the meaning of that term as used in Section 203 of the Federal Power Act.

(2) By the proposed sale of facilities Applicant will dispose of a part of its facilities subject to the jurisdiction of the Commission within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed sale of facilities of Applicant, all as described above upon the terms and conditions set forth in the application and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(4) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed sale by Applicant of the aforementioned substation and related facilities and the purchase thereof by Sharon Steel Corporation, all as described above, are authorized and approved upon the terms and conditions and for the purposes set forth in the application, subject to the provisions of this order.

(B) Applicant shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) The loss to Applicant of $21,976.39 as a result of the aforesaid sale of facilities shall be recorded by a charge to Account 426, Other Income Deductions.

(D) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(E) The foregoing authorization and approval is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before this Commission, and nothing in this order shall be construed as an acquiescence by this Commission in any estimate or determination or cost of any valuation of property claimed or asserted.

OPINION NO. 387

AMERICAN LOUISIANA PIPE LINE COMPANY, DOCKET NO. G–18419 MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NOS. G–12292, G–17512 AND RP60–9

OPINION AND ORDER MODIFYING AND ADOPTING INITIAL DECISION OF PRESIDING EXAMINER, PRESCRIBING RATES AND REFUNDS, AND PROVIDING FOR FURTHER HEARINGS

(Issued May 16, 1963)*

Syllabus

1. Commission *concludes* that pipeline's proposed change from cost-of-service to conventional rate should be denied—observing that sales to affiliates present possibilities of abuse and should be scrutinized with care. Pp. 935–936.

*Initial decision appears on p. 955. Rehearing denied July 12, 1963, 30 FPC 76. Petition for Review filed on September 10, 1963, in *American Louisiana Pipe Line Co.* v. *F.P.C.* (CADC No. 18108).

2. Objective of rate regulation can best be obtained by requiring continued use of cost-of-service form of rate. P. 936.
3. Departure from *Seaboard* cost classification should be permitted only upon substantial showing. P. 940.
4. Commission *concludes* that where, as here, the pipeline's service to customers the year around involves co-ordinated use of integrated pipeline and underground storage facilities and operations for relatively equal periods of inputs into and withdrawals from storage, cost of storage should be classified the same as transmission costs under *Seaboard*—50 percent to demand, 50 percent to commodity. P. 942.
5. Since 40-mile lateral into gas-producing area is in substance an extension of the main pipeline, it should be viewed as transmission facility and its associated costs classified in conformity with *Seaboard*. P. 943.
6. Objective of rate design is to determine rates that enable pipeline to sell its gas at charges which recover from various types of loads their associated cost of service. P. 943.
7. Weight to be accorded a recommended end result depends largely upon the objectivity of the witness. P. 944.
8. Commission *concludes* that ACQ–1 rate for pipeline, deviating 13-percent to demand, represents a reasonable accommodation of conflicting interests; *observes* that "mathematics" by which rate is computed are not overly important as long as end result reflects reasoned judgement. P. 944.
9. Commission *rejects* recommended equalization of monthly contract demands and billing demands. P. 946.
10. Commission *disallows* proposed increased rates in proceedings arising under Section 4(d) of the Natural Gas Act, and prescribes rates and refunds. P. 949 *et seq.*

Chairman Swidler *concurring.*

Commissioner Ross *concurring.*

Charles V. Shannon for American Louisiana Pipe Line Company and Michigan Wisconsin Pipe Line Company.

E. C. Stoddard for Michigan Public Service Commission.

Seymour Tabin for Wisconsin Public Service Corporation.

H. J. O'Leary for Public Service Commission of Wisconsin and the State of Wisconsin.

Harry K. Wrench, Jr., and *Glen H. Bell* for Wisconsin Fuel and Light Company.

Eugene O. Gehl for Wisconsin Power and Light Company.

John F. Zimmerman for Wisconsin Natural Gas Company and Wisconsin Michigan Power Company.

Robert L. Waldo for Milwaukee Gas Light Company.

John F. Gaston for Iowa Electric Light and Power Company.

Rueben Goldberg and *George Spiegel* for Michigan Gas and Electric Company.

Charles R. S. Anderson for Iowa Southern Utilities Company.

Willard S. Stafford for Madison Gas and Electric Company.

Ira A. Beynon for Ohio Valley Gas Company.

David R. Kaplan for Wayne County, Michigan.

Thomas F. Ryan, Jr., and *Harry A. Poth, Jr.* for Michigan Gas Utilities.

E. J. McManus for Keokuk Gas Service Company.

Jerome J. McGrath for Fuels Research Council, Inc., National Coal Association, United Mine Workers of America and Midwest Coal Worker, Inc.

W. F. Spurrier for North Central Public Service Company.

Aaron C. Brown for Paris-Henry County Public Utility District.

Albert J. Feigan for American Gas Company.

Arthur R. Seder, Jr., for Michigan Consolidated Gas Company.

Robert Perdue, Abraham R. Spalter and *Julius C. Meier* for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

WOODWARD, *Commissioner:* This is a rate case, arising on proposed rate changes filed by American Louisiana Pipe Line Company (American Louisiana) and Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) under section 4(d) of the Natural Gas Act (Act). It comes before us upon the exceptions of five parties filed on November 8 and 9, 1962, to the examiner's decision issued September 27, 1962. The costs of service of American Louisiana and Michigan Wisconsin in all four dockets have been stipulated by the parties and approved by the Commission. Similarly stipulated and approved, subject to certain qualifications not here pertinent, are the refund obligations of American Louisiana in its docket, and of Michigan Wisconsin in its "locked-in" Dockets Nos. G–12292 and G–17512.[1] Thus the general question remaining for decision in this case is the proper design of American Louisiana's rates for the future in Docket No. G–18419, and of Michigan Wisconsin's rates for the future in Docket No. RP60–9.

More specifically, the principal issue in American Louisiana's docket is whether to grant that company's request to change from a cost-of-service rate to a conventional, demand-commodity rate. The examiner would permit the change. Michigan Gas and Electric Company (Michigan Gas), a distributing company customer of Michigan Wisconsin, excepts to the examiner's decision permitting this change.

The principal issue in Michigan Wisconsin's Docket No. RP60–9[2] is whether we should approve a demand-commodity, ACQ–1 rate[3] for the company, the demand and commodity charges of which would not produce the same demand and commodity revenues that would be produced by demand and commodity changes based upon the classification of costs prescribed by the *Seaboard* case.[4] The examiner would approve an ACQ–1 rate the demand charge of which produces demand revenues some 13 percent in excess of the costs that would be classified to demand under the *Seaboard* formula,[5] *i.e.*, the examiner's rate deviates to demand by some 13 percent.[6] Two customers of Michigan Wisconsin,

[1] The parties agreed to the costs of service by their Stipulation and Agreement of July 12, 1961, hereinafter referred to as the original Stipulation, entered into during the hearing (Tr. 19, *et seq.*), and approved by Commission order issued October 20, 1961, 26 FPC 603, except as to rates of return which the Commission fixed by Opinion No. 363 and accompanying order issued September 17, 1962, 28 FPC 482. The said original Stipulation is an appendix to the examiner's decision.

[2] Further issues raised in Docket No. RP60–9 involve the propriety of zone rates and the lateral policy for Michigan Wisconsin. Our order hereto provides for future hearings on these issues.

[3] ACQ means annual contract quantity.

[4] *Atlantic Seaboard Corporation*, 11 FPC 43; and see *Northern Natural Gas Company*, 11 FPC 123, and subsequent Commission decisions applying *Seaboard*. The *Seaboard* formula is more fully described hereinafter.

[5] Of course, where the dollars of demand revenues exceed the *Seaboard* classified costs, the dollars of commodity revenues are less than *Seaboard* costs. Thus the overall revenues match the overall costs, but not in the proportions determined by the *Seaboard* classification.

[6] The percentage of the deviation to demand is computed by determining what is the amount of commodity costs that cannot be recovered by the commodity charge because of competition from other fuels or otherwise (this amount of commodity costs must be recovered by the demand charge and so is transferred to demand costs); and then dividing the amount of such commodity costs by the total of the strictly *Seaboard* demand costs.

Iowa Southern Utilities Company (Iowa Southern) and North Central Public Service Co. (North Central) except to the examiner's ACQ–1 rate, contending that he should have adopted Michigan Wisconsin's filed rate which deviates to demand by some 29 percent. They favor the greater deviation to demand since it would produce a relatively lower commodity charge which would facilitate their industrial sales. In contrast, Michigan Gas and the Coal Interveners[7] contend in their exceptions that the examiner should have adopted a rate for Michigan Wisconsin with no deviation from *Seaboard* and thus a relatively higher commodity charge. These parties also make other contentions of error as described hereinbelow. Staff agrees to most of the examiner's results but excepts to some of his reasoning.

Oral argument was held on February 26, 1962, counsel for all the above-mentioned parties participating.

We conclude that, except for permitting American Louisiana to change from a cost-of-service rate to a conventional rate, and for some of the reasoning excepted to by staff, the examiner's decision is correct in basic particulars and should be adopted by the Commission. The examiner's decision adequately disposes of most of the matters urged in the exceptions, and we shall discuss only those points on which it should be modified or amplified.

American Louisiana, Docket No. G–18419

The examiner, permitting American Louisiana to change from a cost-of-service rate to a conventional demand-commodity rate, noted that this was its third request to make this change since the company was certificated in 1956. The examiner said that the Commission by order issued in 1957[8] denied the company's request to make this change, but he noted that the order stated that the Commission would consider the request again after the company had gained additional operating experience, and he thought that the company has now gained the necessary experience. Further, the examiner said that inferentially, American Louisiana's rate form change was approved by the parties' original Stipulation of July 12, 1961, and the Commission's October 20, 1961 order approving the Stipulation, referred to in footnote 1. Also, the examiner noted that only Michigan Gas, a customer not of American Louisiana but of Michigan Wisconsin, opposes the change, but he thought that Michigan Gas presumably would benefit from the more stable conventional rate as opposed to the fluctuating cost-of-service rate. Also, the examiner said that the demand-commodity rate is normal for established pipelines serving other than affiliates.

Michigan Gas in its exceptions contends that a cost-of-service rate is the soundest form of rate for American Louisiana, which sells practically all of its gas to two affiliates, Michigan Wisconsin and Michigan Consolidated Gas Company, since this form of rate minimizes inter-affiliate transactions which afford the possibility of manipulation and excessive earnings. It contends that American Louisiana is actually a department of the affiliates, that a cost-of-service rate assures American Louisiana all proper costs, and that the requested change is essentially a device to obtain additional profits. The fact that American Louisiana's cost of service was approved is immaterial, it says, since rate design was the issue set for hearing in this case.

We conclude that, contrary to the examiner, American Louisiana's change from a cost-of-service to a conventional rate should be denied. As years of regu-

[7] Fuels Research Council, Inc., National Coal Ass'n, United Mine Workers of America, Mid-West Coal Producers Institute, Inc., Upper Lake Docks Coal Bureau, Inc., and The Chesapeake and Ohio Railway Company.

[8] 18 FPC 795; and see 16 FPC 779.

latory experience attest,[9] sales to affiliates present possibilities of abuse and should be scrutinized with care. Here too, corporate form should not be permitted to defeat the objectives of regulations.[10] A cost-of-service rate affords us an effective and feasible means of supplying the desired supervision. Under such a rate, the seller's charges to its affiliates are computed on the basis of its actual costs for successive billing periods, plus the return allowed. Thereby the seller is permitted all costs to which it is entitled but no more, thus achieving the desideratum of utility rate regulation.

However, Michigan Wisconsin argues that conventional rates such as the Commission permits most pipelines to employ would eliminate the fluctuations and cost-plus disadvantages of a cost-of-service rate. It contends that American Louisiana is not a department of its affiliates, Michigan Wisconsin and Michigan Consolidated, but a separate and separately regulated organization. And it says that our 1957 order, *supra*, denied its request to change from a cost-of-service rate on the ground of insufficient operating experience to evaluate claimed costs, but without prejudice to its filing again to change. Now, it says, American Louisiana has sufficient operating experience and its costs are reasonable, as shown by the original Stipulation of July 12, 1961, and Commission acceptance thereof, approving American Louisiana's cost of service in this proceeding.[11]

These arguments of Michigan Wisconsin do not support the requested change, nor was any evidence adduced to support it. American Louisiana is undeniably an affiliate of Michigan Wisconsin and Michigan Consolidated, which purchase in excess of 95 percent of its gas.[12] These circumstances justify applying to it requirements not invoked against companies otherwise situated. Fluctuations from a cost-of-service rate are no insuperable disadvantage. Of course, the issue of rate design, which is expressly the issue here, embraces rate form. Our 1957 order denying the change was without prejudice to another filing, it is true, but we said there that we "would consider the request again". And on the present facts, we conclude that we can best attain the objective of rate regulation—the allowance of all proper costs and return but no more—by requiring the continued use of a cost-of-service form of rate.

American Louisiana's original cost-of-service Rate Schedule CS–1 contained in its FPC Gas Tariff, Original Volume No. 1, refers to the pertinent operating expense and other accounts contained in the 1954 edition of the Uniform System of Accounts, rather than to the presently effective 1961 edition. Therefore, we should not permit American Louisiana to reinstate the original Rate Schedule CS–1, but shall require it to file a new cost-of-service rate schedule which makes proper reference to the current System of Accounts, and which is otherwise in full conformity with its original Rate Schedule CS–1 and satisfactory to the Commission.

American Louisiana's refund obligations are prescribed by the original Stipulation cited in footnote 1. American Louisiana has complied in part with its refund obligations in this docket, and our order hereto sets forth the company's remaining refund and other obligations under this opinion.

MICHIGAN WISCONSIN, DOCKETS NOS. G–12292 AND G–17512

As described more fully in the examiner's decision, Michigan Wisconsin's filing in Docket No. G–12292 involves an increase in the company's previously effective

[9] *Cf., Dayton P. & L. Co.* v. *P.U.C. Ohio*, 292 U.S. 290 (1934); *Mississippi River Fuel* v. *F.P.C.*, 252 F. 2d 619 (CA 5, 1956).

[10] *Cf.*, Opinion No. 378 issued February 6, 1963, in *Texas Eastern Transmission Corporation*, Docket No. G–12446, *et al.*, 29 FPC 249.

[11] As described in footnote 1, *supra*.

[12] The remainder is purchased by five non-affiliated distributing companies.

straight rate, and in Docket No. G–17512, a change from the company's straight rate to a demand-commodity type of rate and other rates. Both dockets involve locked-in periods, the company's rates for October 7, 1960, and subsequently, being the subject of the filing in Docket No. RP60–9.

The issues respecting Michigan Wisconsin's rates and refunds in Docket Nos. G–12292 and G–17512 are substantially disposed of by the original Stipulation cited *supra*. Michigan Wisconsin has complied in part with its refund obligations in these dockets, and our order hereto sets forth the company's remaining refund and other obligations in these dockets under this opinion.

MICHIGAN WISCONSIN, DOCKET NO. RP60–9

Propriety of the examiner's rates for Michigan Wisconsin

The remaining question, presented in Docket No. RP60–9, is what are properly designed rates for Michigan Wisconsin for the future. Michigan Wisconsin's present rates became effective on and after October 7, 1960, subject to refund pursuant to Commission order issued January 24, 1961. Michigan Wisconsin's cost of service having been stipulated, determining the particular rates to recover such costs involves basically two further steps, as described hereinafter: the classification of costs, and the design of rates. Also, under the original Stipulation, only the ACQ–1 (annual contract quantity) and OS–1 (overrun service) rates are controverted.

The proposed rates and supporting arguments.—The three sets of rates proposed for Michigan Wisconsin in this proceeding—Michigan Wisconsin's filed rates, the examiner rates, and rates reflecting costs classified in accordance with the *Seaboard* formula—are summarized in the footnote.[13] In form, Michigan Wisconsin's rates consist, as noted below, principally of the demand-commodity ACQ–1 rate; the OS–1 rate; and a SGS–1 (small general service) rate. The terms of the company's rate schedules are also summarized below.[14]

[13]

	Filed rates of Mich. Wis. (requested by Iowa Southern and North Central)	Rates approved by examiner (recommended by staff, *et al.*)	Rates reflecting *Seaboard* classification (requested by Mich. Gas and Coal Intervenors)
ACQ–1 rate:			
Demand	$3.50	$3.05	$2.65
Commodity—cents	26	27.85	29.67
Developmental rate—cents	46	45	----------
OS–1—cents	26	30	33
SGS–1—cents	46	45	----------

[14] Michigan Wisconsin's contract year is the 12 months beginning each September 1st. For service under the ACQ–1 schedule, the company and each customer agree on a Maximum Daily Quantity (MDQ) for each year, which fixes the maximum volume of gas Michigan Wisconsin is obligated to deliver to the customer on any single day. These deliveries are subject to a schedule of monthly Contract Demands. During the four cold months, November through February, the buyer is entitled to demand 100 percent of his Maximum Daily Quantity but only 85 percent from March 1–March 15, and 75 percent for the other months of the year. The total volume of gas the customer is entitled to purchase during the contract year, called the Annual Contract Quantity (ACQ), may be stated in terms of the permitted number of days use of the Maximum Daily Quantity. For example, during the contract year 1961–62, each customer was entitled to a total of 190 days' use of his Maximum Daily Quantity. In 1960–61, each customer's ACQ was 185 days' use of the MDQ. A customer's purchases in excess of his MDQ on a particular day (daily overrun), or in excess of his ACQ in a particular year (annual overrun), if authorized by Michigan Wisconsin, are billed as overrun gas under the OS–1 schedule. If not authorized, a penalty is charged.

The examiner's ACQ–1 rate, which staff and most of the parties would have agreed to under another stipulation, the First Supplemental Stipulation,[15] would, as explained at the outset, deviate to demand by some 13 percent.

The examiner cited a number of reasons to support his ACQ–1 rate. In summary, he thought, first, that it was supported by the evidence of staff witnesses and particularly the testimony and judgment of the staff's rate design expert, Hertz.

Second, he thought that it was also supportable when tested by comparing a customer's average net cost for gas under Michigan Wisconsin's filed rate with a customer's average net cost under the examiner's rate.[16] He thought that graphs in staff's answering brief supported the conclusion that Michigan Wisconsin's distributing company customers could purchase at his ACQ–1 rate and still compete with distributing companies purchasing from other pipelines.

Third, he recognized that the *Seaboard* formula was a point of departure, but found that claimed mitigating circumstances urged by some customer companies of Michigan Wisconsin did not support Michigan Wisconsin's filed ACQ–1 rate, which departs from *Seaboard* by a 29-percent deviation to demand. However, he did accept the contentions of some customers that Michigan Wisconsin's underground storage costs should be classified 100 percent to demand instead of 50–50 between demand and commodity, and Laverne Field production costs should be classified 50–50 between demand and commodity instead of 100 percent to commodity.

And fourth, he thought that the "almost unanimous acceptability" of his rates to the parties, as evidenced by the proposed First Supplemental Stipulation, *supra*, supported them in some measure.

Iowa Southern and North Central except to the examiner's decision on numerous grounds. In summary, they argue first, that the commodity charge of the examiner's ACQ–1 rate, which they consider decisive in attracting industrial customers, is unsupported since not based on reason or a consideration of its effect on Michigan Wisconsin or its customers, but was reached simply by adding to the 26-cent commodity charge of the present rate, one-half the difference between it and the 29.67-cent commodity charge computed in conformity with *Seaboard*. In contrast, it is said, Michigan Wisconsin's witness Ransom fully supported the presently effective rates from his knowledge of the needs of and conditions relating to Michigan Wisconsin and its customers.

Second, these parties contend that comparisons with average net costs, and with other pipelines' rates, do not support the examiner's rates. They contend that record evidence shows that the examiner's 27.85-cent commodity charge is unjustifiably higher than that of the competing pipelines, Northern Natural Gas Company and Natural Gas Pipe Line Company, and would impede the customers' building up loads particicularly in southeastern Iowa. Further, they contend,

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[15] In addition to the original Stipulation described in footnote 1, most of the parties proposed a First Supplemental Stipulation of November 9, 1961 (Tr. 370), agreeing to rates for American Louisiana for the future, and for Michigan Wisconsin for the future in Docket No. RP60–9. They also proposed a Second Supplemental Stipulation of December 1, 1961 (Tr. 1067), providing for "interim" rates for Michigan Wisconsin from October 7, 1960, until the newly designed rates for the future proposed under the First Supplemental Stipulation for Docket No. RP60–9 became effective. Since not all parties joined in these supplemental stipulations, they were rejected by Commission order issued January 12, 1962, 27 FPC 29.

[16] The examiner found, for example, that Iowa Southern's average cost of gas under his ACQ–1 rate with its 13-percent deviation to demand was less than its average cost under Michigan Wisconsin's filed ACQ–1 rate with its 29-percent deviation to demand.

other pipelines permit the purchase of full contract quantities 365 days a year, while Michigan Wisconsin has a 190-day limitation on its customers' use of MDQ's.[17] And North Central contends that the examiner's considering the graphs in staff's answering brief unfairly denies it opportunity to cross examine and show errors with respect thereto.

Third, they contend that the examiner disregarded "mitigating circumstances" which justify departing from the *Seaboard* cost classification. Iowa Southern says that the *Seaboard* facts differ so that case is not controlling here because in *Seaboard*, constant costs were classified 50 percent to commodity and 50 percent to demand reflecting an "annual" and a "peak day" use, whereas Michigan Wisconsin imposes a 190-day limitation on MDQ's and so its customers have only about half the "annual use" of Michigan Wisconsin's facilities that customers of Atlantic Seaboard had of its facilities. And North Central contends that the examiner ignored evidence of the discriminatory effects of his 27.85-cent commodity rate against distributors with high load factors, and of the desirability of the lower commodity charge of the filed rate in improving the economies of the areas they serve.

In contrast, Michigan Gas and the Coal Interveners oppose any departure from the *Seaboard* decision. Summarizing their principal objections, they contend, first, that staff witness Hertz's primary reason for his ACQ–1 rate, which the examiner adopted, was that a change from the 29-percent deviation of the presently effective rate to a strictly *Seaboard* rate would be "too drastic". This reason, they say, is insubstantial, and fallaciously assumes that the company has some vested right to its filed rate with its 29-percent deviation to demand.

Second, they deny that there was any convincing showing of mitigating circumstances which justify departing from *Seaboard*. They contend that although it was claimed that the *Seaboard* classification would make it difficult for the distributing companies to make off-peak industrial and electric generation boiler fuel sales, no specific instances were shown of any customer losing any sales or not selling its gas if *Seaboard* were followed. Nor is there any basis in fact, they say, for the examiner's departing from Commission precedent, and classifying Michigan Wisconsin's underground storage costs 100 percent to demand, and Laverne Field production costs 50–50 between demand and commodity.

Third, the Coal Interveners contend that the examiner erred in limiting his consideration to two sets of proposed rates—the filed rates and the rates proposed in the First Supplemental Stipulation—both of which depart from *Seaboard* by a deviation to demand. They say he thus narrowed his vision to the real issue, namely, whether *any* departure from *Seaboard* is justified.

Although staff supports the rates approved by the examiner, staff excepts to the examiner's classifying underground storage costs 100 percent to demand and Laverne Field production costs 50–50 between demand and commodity, and to some of his other conclusions, as described below.

For the reasons stated hereinbelow we conclude that, although some of the examiner's reasoning is subject to modification on a few points, the results he reached are sound and we should adopt the rates for Michigan Wisconsin he approved.

Classification of costs.—As indicated above, determining rates for Michigan Wisconsin that will recover the agreed costs of service involves basically two

[17] This and some of the other terms in Michigan Wisconsin's tariff are defined in footnote 14 above.

steps: first, the classification of costs, which provides a point of departure for the second step, the design of rates.

Considering first the classification of costs, this step in the allocation process [18] has the primary objective of assuring that off-peak sales bear a fair share of the pipelines constant costs which would otherwise inequitably burden the domestic consumer. And although no actual allocation of costs between jurisdictional and nonjurisdictional sales is necessary here since Michigan Wisconsin's sales are all jurisdictional, it is necessary to classify costs to determine tentatively the demand and commodity components of the ACQ–1 rate, and the general levels of the rates for the various classes of service. Also, the classification step provides a consistent standard for comparing rates and operations of different pipeline companies.

The basis of our present classification of costs (and their underlying functionalization) is of course judgment, first exercised in *Seaboard*, and in the years since formulated as a rule.[19] We made it clear from the beginning, however, that *Seaboard* is not an inexorably fixed rule: [20] in determining rates, the question is one of overall reasonableness, and the *Seaboard* classification is but a starting point in resolving this question. Nevertheless, the *Seaboard* classification of costs protects the domestic consumer from excessive fixed costs, affords the Commission a fair and definite point of reference in regulating pipeline rates, and provides the pipelines a known and consistent standard for developing their rates and markets. Obviously, therefore, a departure from the *Seaboard* cost classification should be premittted only upon a substantial showing.

Staff classified Michigan Wisconsin's costs in accordance with *Seaboard*, and then computed rates reflecting that classification as a point of departure in designing the particular rates deemed appropriate for Michigan Wisconsin's system.

The examiner followed staff's classification of costs except as to underground storage costs and Laverne Field production costs. Considering first the former, the examiner rejected staff's classification of such costs 50–50 between demand and commodity in the manner of tranmission costs. Instead, he adopted the position of North Central and Iowa Southern that since underground storage operations are not like transmission operations and add nothing to annual sales capacity, but are more comparable to propane peaking operations and serve a

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[18] In general, the allocation process consists of four steps. First, costs are grouped by operating functions or "functionalized" in categories of production, transmission, distribution, and here, underground storage costs. Second, such costs are then characterized in conformity with their cost behavior as constant costs, and variable costs. Third, such costs are then classified into two categories, demand costs, normally 50 percent of the direct constant costs; and commodity costs, normally the remaining 50 percent of direct constant costs and 100 percent of variable costs. And fourth, such demand and commodity costs are allocated to jurisdictional and nonjurisdictional sales in proportion to demands on the peak days, and in proportion to the volumes of gas delivered during a representative period, respectively.

[19] Under the *Seaboard* case, direct constant costs are classified 50 percent to demand and 50 percent to commodity, and variable costs are classified 100 percent to commodity. Generally, demand costs are costs associated with supplying pipeline capacity necessary for peak deliveries reflecting the customers' contracted demands; commodity costs are costs associated with supplying the actual volumes of gas delivered annually.

[20] We indicated in the *Seaboard* decision, 11 FPC at 62, that "mitigating circumstances" would justify a departure from the *Seaboard* rule. And see our recent Opinion No. 379, issued in ***Southern Natural Gas Company***, Docket No. G–20509, *et al.*, on February 18, 1963, pp. 341–342 (29 FPC 323).

predominately peaking function, the costs of underground storage should be classified like propane peaking costs, namely, 100 percent to demand.[21]

Staff excepts to the examiner's decision on this issue on several grounds. First, staff contends that analyzing underground storage costs on the basis of engineering operations shows that they are incurred and should be classified like transmission costs. Staff contends that the cycles of inputs into storage and withdrawals from storage are governed by the daily requirements of the distributing company customers during the entire course of the year, and further, that inputs are made during six or seven non-heating months and withdrawals are made during the five or six months of the heating season. Thus it is clear, says staff, that underground storage does not provide a predominately peaking service, but provides both annual and peaking service, so that the costs incurred in connection with underground storage should be classified in the same manner as transmission costs.

Second, staff contends that analyzing these costs from the economic viewpoint supports this classification. Staff argues that the "base" gas in storage is not withdrawn but is stored for the life of the storage operation, and that return, income taxes and other constant costs are payable on it in the same manner as are such costs associated with transmission facilities. Likewise, says staff, the costs of the "top" gas which is withdrawn are computed in the working capital requirement of the company and are therefore included in the rate base in a manner likewise comparable to the costs of transmission facilities.

Third, staff contends that underground storage facilities used daily for five or six months throughout the winter season to supply space-heating loads are clearly distinguishable from propane facilities used only for a few of the coldest days during the winter space-heating season to provide strictly peaking capacity.

Staff's exceptions to the examiner's decision on this issue are well taken. The record establishes and we find that Michigan Wisconsin's storage facilities and the operations thereof are integral parts of the company's transmission system and of its operations. Also, from the viewpoint of engineering operations, as described in staff's exceptions summarized above, the underground storage facilities, like the transmission facilities, contribute to both the peak and annual service of the company. Certainly, there is no basis in this record for characterizing the space-heating service of Michigan Wisconsin made possible by underground storage, covering an interval of five or six months and comprising perhaps 50 percent of the company's total deliveries, as an exclusively peaking service. Obviously, there is little resemblance between such service, and a propane peaking service rendered for brief intervals on a relatively few of the coldest winter days.

Further, the use of underground storage improves the company's overall service for the entire year in a way which could only be accomplished otherwise by increasing compressor horsepower or looping transmission lines, the costs of either of which would, of course, be classified 50 percent to demand and 50 percent to commodity under *Seaboard*. And, although it is true that no underground storage was involved in the *Seaboard* case, we have subsequently considered cases

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[21] Iowa Southern also argued that *Seaboard* has no application here since that case did not involve any underground storage operations. And it argued that *Seaboard* is further distinguishable in that there, constant costs were classified 50–50 between demand and commodity on the theory that there were annual and peak day uses entitled to equal consideration, but here the customers' have a sharply curtailed annual use because of the 190 days' limitation on the MDQ's contained in Michigan Wisconsin's tariff described hereinabove.

involving underground storage costs and classified such costs 50–50 between demand and commodity in conformity with *Seaboard*.[12] Nor was there any showing made in this case of sufficient substantiality to justify departing from *Seaboard* here.

Accordingly, we conclude that where, as here, the pipeline's service to its customers the year around involves the co-ordinated use of integrated pipeline and underground storage facilities and operations for relatively equal periods of inputs into and withdrawals from storage, the cost of such storage should be classified in the same manner as transmission costs under *Seaboard*, namely, 50 percent to demand and 50 percent to commodity.

Respecting Laverne Field production costs, the examiner viewed certain costs relating principally to a 20-inch, 40-mile lateral with a capacity of 200,000 Mcf of gas per day, owned and operated by Michigan Wisconsin to transport gas from the Laverne Field in the Oklahoma Panhandle to the company's main transmission line, as transmission costs. Accordingly, the examiner classified such costs 50 percent to demand and 50 percent to commodity, rejecting staff's classification thereof 100 percent to commodity.

North Central and Iowa Southern in their briefs had recommended the classification adopted by the examiner on several grounds. First, they contended that the Laverne Field lateral is of the same character and performs the same function as Michigan Wisconsin's main transmission line, as shown by daily "over-takes" from the Laverne Field to meet winter peak demands. Second, they contended that large expansions in Michigan Wisconsin's transmission capacity and increases in its peak day deliveries authorized by the Commision were predicated upon the capacity available through this lateral. Third, they contend that prior Commission decisions are not controlling as to the classification of the Laverne Field lateral costs, since such decisions involved the costs of company-produced gas including drilling costs and exploratory expenses, which costs were beyond question production costs and were properly classified to commodity in the same manner as the costs of gas purchased under a commodity rate. And fourth, they contended that the Commission held in *Ben Bolt Gathering Company*, 26 FPC 825 (1961), rehearing denied, 27 FPC 334 (1962), that the operation of a supply line such as the Laverne Field lateral from a producing field to the main line of a pipeline represents a transmission function.

Staff excepts to the examiner's classification of Laverne Field lateral costs on several grounds. First, staff contends that the predominate function of this lateral is to supply gas from the Laverne Field to Michigan Wisconsin's main transmission line and therefore the costs thereof should be regarded as production and gathering costs and classified accordingly 100 percent to commodity. Second, staff contends that analysis from an engineering operations viewpoint supports characterizing these facilities as production rather than transmission facilities. Thus staff argues that the Laverne Field lateral is used more directly in relation to production from connected wells or the operation of a gasoline plant than in relation to satisfying transmission system demands. Also, staff argues that the lateral may be operated at reduced capacity while transmission facilities are operating at maximum capacity, and *vice versa*. The size alone of the lateral, says staff, is not necesarily decisive as to its function. Third, staff contends that Michigan Wisconsin's certificate application classified these facilities as gathering lines, the Commission certificated them as such, they have subsequently been regarded as such, and no substantial evidence was adduced to

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[12] *Cf., Home Gas Company, et al.*, 13 FPC 241, 259 (1954); *The Ohio Fuel Gas Company*, 13 FPC 280, 291 (1954); *United Fuel Gas Company*, 12 FPC 251, 275 (1953); *Tennessee Gas Transmission Company*, 27 FPC 202 (1962).

justify treating them in any way other than they were treated in the past, or to justify classifying their costs other than 100 percent to commodity in conformity with *Seaboard*.

Here, we think the examiner should be affirmed and staff's exceptions rejected. The Laverne Field lateral is 40 miles long, has a diameter of 20 inches, has a capacity of 200,000 Mcf of gas per day, is connected to the company's main line, and is in substance an extension of the main line. On these facts, this facility reasonably should be viewed as a transmission facility and the costs associated therewith treated as transmission costs, to be classified in conformity with *Seaboard* 50 percent to demand and 50 percent to commodity.

Notwithstanding the above classification of 50 percent of the costs associated with the Laverne Field facilities to demand,[23] we conclude that the facts and considerations relevant to the design of rates for Michigan Wisconsin justifies our adopting the specific ACQ–1 rate the examiner approved and staff recommended, as discussed in the section which follows. This decision is consistent with the examiner's, for although he would have departed from a strict *Seaboard* classification of costs with respect to the Laverne Field facilities, as well as in the classification of underground storage costs 100 percent to demand described above, he concluded, as set forth on page 970 of his decision, that as a matter of rate design staff's recommended rates were proper.

Design of rates.—The design of rates, which is the next step in determining rates for Michigan Wisconsin also calls for the exercise of judgment in large measure.[24] Here, judgment is applied to determine whether any deviation from *Seaboard* rates is warranted, considering all the circumstances and with particular reference to the needs, conditions, and operations of Michigan Wisconsin and its customers. The objective of rate design is to determine rates that enable the pipeline to sell its gas at charges which recover from the various types of loads their reasonably associated costs of service, keeping in mind the factors pertinent in this regard.[25]

We have reviewed with care the examiner's decision, and conclude that the record supports his ACQ–1 and other rates. The examiner considered the evidence of Michigan Wisconsin, Iowa Southern and North Central in support of Michigan Wisconsin's filed ACQ–1 rate with its 29-percent deviation to demand,[26] and also the opposing arguments of the Coal Interveners and Michigan Gas[27] in favor of a rate reflecting a strict *Seaboard* cost classification with no deviation whatever. But he accorded preponderant weight to the evidence adduced by witnesses for the Commission's staff, and particularly staff witness Hertz, in favor of an ACQ–1 rate with a 13-percent deviation to demand. In our view, the examiner's reliance on the judgment of the Commission's staff witnesses is

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[23] Under this classification, demand costs would be increased by $1,072,605, and commodity costs decreased a like amount. The costs reflecting these changes would produce an indicated ACQ–1 rate with a demand charge of $2.75 and a commodity charge of 29.425 cents.

[24] Applicable to rate design is the language in *Colorado Interstate* v. *F.P.C.*, 324 U.S. 581, respecting the allocation of costs, that it (589, 591) "* * * is not a matter for the slide rule" and "has no claim to an exact science" but "involves judgment on a myriad of facts", and that "considerations of fairness, not mere mathematics" are governing.

[25] The factors to be considered include the magnitude of the different classes of sales; load factors and load patterns of the pipeline and its customers; the kind of service rendered, *i.e.*, firm or interruptible, peak or off-peak, seasonal or annual, etc.; the comparative prices of competitive fuels in the market, and the ability of the company and its customers to make necessary competing sales of gas; and any minimum bill, penalty for unauthorized overruns, or other conditions of service contained in the tariff.

[26] The meaning and derivation of deviation to demand are explained *supra*, p. 934.

[27] The Coal Interveners and Michigan Gas adduced no evidence to support their position.

well justified. The weight to be accorded a recommended end result depends largely upon the objectivity of the witness. With this fact in mind, the evidence of the staff witnesses, and particularly the judgment of staff witness Hertz respecting his recommended end result, is entitled to preponderant weight on this record.

Further, we have tested the examiner's rates against the applicable criteria and find them supportable. As indicated above, the choice ranges between two extremes: a strict *Seaboard* rate, favored by the Coal Interveners because its higher 29.67-cent commodity component would be competitively advantageous to coal; and Michigan Wisconsin's filed rate with a 29-percent deviation to demand, favored by Iowa Southern and North Central because its lower 26-cent commodity component would facilitate their industrial sales. Obviously, we cannot grant both these requests. We have, as indicated above, long recognized that mitigating circumstances may justify rates other than those reflecting a strict *Seaboard* classification of costs. In rate design particularly, the question is one of overall reasonableness and the *Seaboard* classification of costs is but one factor in reaching a determination on this question.

Here, the evidence of Michigan Wisconsin and some of the distributing companies supports some deviation to demand, for the resulting lower commodity rate will facilitate industrial sales by the customer companies that would benefit Michigan Wisconsin, the customer companies, and the public. And it may be, as Iowa Southern contends, that the 190-day limitation on MDQ's in Michigan Wisconsin's tariff associated with the company's summer storage inputs distinguishes this case to some degree from *Seaboard*, where the customers had 365 days' use of peak demands. Also, it is true that Iowa Southern and North Central adduced evidence to show that staff's ACQ–1 rate, which the examiner adopted, would hinder their increasing their industrial sales and thus deny their Iowa market areas the benefits of expanded economic activity. However, in our view, a deviation to demand as large as the 29-percent deviation proposed under the filed rate, and the resulting shift of a greater share of costs onto the firm gas users (principally domestic consumers), is not supported by evidence of offsetting benefits to the financial status of the distributing companies, the firm gas users, or the pipeline, sufficient to justify such a request. Moreover, the Iowa utilities did not convincingly show that the examiner's rate would in fact harm their operations by causing a loss of present industrial sales. On balance, therefore, we conclude that the examiner's ACQ–1 rate with its some 13-percent deviation to demand represents a reasonable accommodation of the conflicting interests presented by this record.

The exceptions complain, *inter alia*, that staff witness Hertz assumed that Michigan Wisconsin had a vested interest in an ACQ–1 rate which deviated to demand; and that he arrived at his rate mechanically by adopting a commodity component midway between a *Seaboard* commodity component and Michigan Wisconsin's filed commodity component and assigning the balance of costs to the demand component. These arguments present no serious objection. We have tested this rate against the range of possibilities present in this case and find it supportable. The "mathematics" by which the rate is computed are not overly important, so long as the end result reflects a reasoned judgment which, as here, is substantially supported in the light of the factors pertinent in the case.

The foregoing is largely dispositive of North Central's arguments that Michigan Wisconsin's OS–1 rate should be at the same level as the commodity charge of the ACQ–1 rate. Here too, our judgment as to the proper level of this rate coincides with that of the staff witnesses and the examiner. As to North Central's contentions that the 190-day limitation on use of the MDQ in Michigan

Wisconsin's tariff is unwarranted and discriminatory in favor of the company's affiliates, it is clear that the 190-day limitation is necessary to permit summer storage inputs essential to the company's operations, and the implications of discrimination are not supported by the record. North Central's objections that some of the provisions in Michigan Wisconsin's tariff are ambiguous or inconsistent can be considered in later proceedings after greater experience has been gained under the new, two-part tariff.

Further, the virtually unanimous agreement of the parties to the First Supplemental Stipulation, *supra*, supports the examiner's rates. Of course, the fact that most of the parties agreed does not impel our accepting their result. It is the Commission's function to decide, and that function cannot be discharged merely by accepting the consensus view. However, such substantial agreement of the parties, including those with opposing views, is oftentimes cogent evidence of the reasonableness and propriety of the agreement.[28] Considering all the circumstances of this case, the aforesaid agreement sets forth a sound basis for disposing of the rate design issue before us.

Although helpful, a comparison of average costs to the distributing company customers and the graphs contained in staff's answering brief are not decisive to the conclusions we reach in this case. Therefore, the objections advanced to the examiner's relying on these matters need not be given particular consideration.

Equalization of monthly contract demands and billing demands.—Michigan Wisconsin's presently effective tariff provides for monthly contract demands and billing demands that are unequal during certain periods in the year, as shown in the footnote.[29] Staff recommended that the monthly contract demands and billing demands be equalized by reducing the June monthly contract demands from 75 percent to 50 percent of MDQ and raising the March monthly billing demands from 75 percent to 85 percent of MDQ, see footnote, parentheses. The examiner rejected the recommended reduction in contract demands, finding that it was not supported by authority or evidence, and finding further that the variance in these provisions would benefit certain distributing company customers of Michigan Wisconsin.

Staff renews its recommendation in its exceptions. Staff contends that as a basic principle, under a contract-demand form of rate the billing demands imposed upon the distributing company customer should be equal to the contract demands imposed upon the pipeline transporter. This principle, staff contends, is based on the equitable concept that the customer should pay the demand charge, and no more than the demand charge, that is associated with its purchases of gas and with the demands such purchases place on the pipeline system during a given interval. And staff points out that the $3.05 demand charge of the ACQ–1 rate which staff developed and the examiner adopted reflects staff's recommendation for reducing the contract demands applicable to the four summer months from 75 percent of MDQ to 50 percent of MDQ.

[28] *Cf., Northern Natural Gas Company*, Opinion No. 374, issued December 28, 1962, in Docket No. CP61–132, 28 FPC 1155.

[29]

Months	Contract demand	Billing demand
November, December, January, February	100 percent of MDQ	100 percent of MDQ.
March 1 through March 15	85 percent of MDQ	75 percent of MDQ (increase to 85 percent).
March 16 through March 31, and April, May, October.	75 percent of MDQ	75 percent of MDQ.
June, July, August, September	75 percent of MDQ (decrease to 50 percent).	50 percent of MDQ.

Staff recommends alternatively, if we find proper a contract demand of 75 percent of MDQ during the summer months, that the billing demands be increased to 75 percent of MDQ to be consistent with the contract demands in accordance with the above principle. However, staff points out that the effect of doing this would be to decrease the demand component of the ACQ–1 rate from $3.05 to $2.73 per Mcf.[20]

Staff is correct that, as a general proposition in the design of rates, the billing demand should follow the contract demand. Also, it is obvious that tariff terms which depart from principle without good cause should be avoided, for the implications of such departures cannot always be foreseen and they may give rise to uncertainty or possible abuse. However, a degree of flexibility is not objectionable where a proposed exception has been thoroughly explored, is substantially supported, and would have no adverse effects. And such, we conclude, is the case here. As more fully described in the examiner's decision, the variance between Michigan Wisconsin's contract demands and billing demands was rather thoroughly explored at the hearing, is supported by evidence that it affords flexibility of supply and economy of price to the affected utilities, and would not have any adverse effects. Accordingly, we affirm the examiner on this issue.

Asserted further $2,000,000 rate increase of Michigan Wisconsin.—Michigan Gas argues at length that the examiner erroneously permitted a further and unsupported rate increase by Michigan Wisconsin in this case of approximately $2,000,000. The examiner's decision, in rejecting this argument, adequately discusses it and in general we agree with his conclusions. However, in order that there may be no further dispute or misunderstanding with respect to this matter, we shall discuss it briefly.

Michigan Gas points out, first, that Michigan Wisconsin filed proposed changes to its Gas Tariff which, among other things, increase its billing demand units in the off-peak months of March through October.[21] Michigan Gas implies that by our order issued August 31, 1961, which permitted these increases in billing demand units to take effect September 1, 1961, "subject to further orders of the Commission" in the instant proceeding, we undertook to give extensive consideration to these tariff changes in this proceeding.

Second, Michigan Gas contends that these increases in billing demand units constitute an increase in Michigan Wisconsin's rates or charges within the meaning of Section 4(e), since because of them, Michigan Wisconsin's "annual demand charge" increased from $30.10 per Mcf of a customer's MDQ to $31.50, or an increase in the "annual demand charge" of $1.40 per Mcf of MDQ as of September 1, 1961, when the increase in billing demand units became effective. It says that this increase in "annual demand charge" totals $1,952,671, or almost $2,000,000, during the contract year beginning September 1, 1961, based upon Michigan Wisconsin's estimate of sales of 269,151,968 Mcf and revenues of $114,869,391 shown in the supporting data filed by Michigan Wisconsin.

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[20] Raising the billing demands to 75 percent of MDQ increases the number of demand billing units by 1,315,868.

[21] Specifically, Third Revised Sheet No. 6, which superseded Second Revised Sheet No. 6, provides for increases in billing demands as follows:

	Second Revised Sheet No. 6	Third Revised Sheet No. 6
	Percent of MDQ	*Percent of MDQ*
November through February	100	100
March, April, May, October	70	75
June, July, August, September	45	50

And third, Michigan Gas contends that this claimed $2,000,000 rate increase was not supported by any evidence adduced by Michigan Wisconsin showing increased costs equivalent to the $114,869,391 revenues estimated by Michigan Wisconsin for the year commencing September 1, 1961. Michigan Gas says that on the contrary, the original Stipulation of July 12, 1961, which we approved by order issued October 20, 1961, fixed the cost of service at $112,176,045, based on sales of 268,000,000 Mcf for the test year beginning September 1, 1959. Further, it argues, the Stipulation, in providing that Michigan Wisconsin's rates for the period commencing October 7, 1960, should be determined on the basis of the aforesaid cost of service and sales, expressly required that "in no event shall said rates [to be filed herein] produce annual revenues in excess of the revenues which would be produced by the rates which became effective on October 7, 1960, in Docket No. RP60–9."

By combining fact and error, Michigan Gas's arguments achieve a plausibility which is shown on analysis to be without foundation.

Considering Michigan Gas's first point above, it is true that our September 1, 1961 order permitted Michigan Wisconsin to increase its billing demand units "subject to further orders of the Commission" in this proceeding. However, when that order was issued, the parties to this proceeding had already, on July 12, 1961, entered into the original Stipulation agreeing to Michigan Wisconsin's cost of service on the basis of a test year ending August 31, 1960, and that Stipulation was before us, even though we did not approve it until October 20, 1961. When we issued the September 1, 1961 order we did not intend that Michigan Wisconsin's proposed increases in billing demand units would be the subject of a whole new rate case, with a new test year two years later than the agreed test year, a new showing of costs, and new estimated revenues. And such would be necessary if Michigan Gas's contentions are accepted. On the contrary, we contemplated that the increases in billing demand units should be considered within the confines of Michigan Wisconsin's current rate proceeding, in which the parties had already effectively stipulated to the cost of service.[32] Accordingly, concerning Michigan Wisconsin's proposed increases in billing demand units, there is presented in this proceeding the bare question of whether such increases are justified. And their justification is adequately evidenced by the facts, as we show more fully below.

Second, it is also true that Michigan Wisconsin's filing to increase its billing demand units was a change subject to Commission review under Section 4(e),[33] and we do not understand the examiner to have held otherwise.[34] And it is true that the increase in billing demand units would produce more revenues for Michigan Wisconsin, although it should be noted that this increase in revenues is justified by the fact that the customers have five days more use of the firm service under the increased billing demand units.[35] But the crucial fact is that in this proceeding, we are not concerned with the asserted $114,869,391 in revenues, for such revenues are totally extraneous to this case. They relate to a

[32] Reasonably, most if not all the parties shared this understanding, for they had to make the nominations on which Michigan Wisconsin's increased billing demand units were based, and of course were then cognizant of their pending original Stipulation.

[33] Whether it was a change in a "rate, charge, classification or service" under that section is not overly important.

[34] We so construed the filing when our order issued September 1, 1961, made the applicable tariff sheet subject to our order in this proceeding.

[35] It may also be noted that the "annual demand charge" referred to by Michigan Gas is not a rate contained in Michigan Wisconsin's tariff but is strictly the result of a computation, emphasized at length by Michigan Gas to give color to its claim that Michigan Wisconsin has somehow unlawfully effected an increase in rates.

period a year after the close of the test period and to costs which cannot be and were not intended to be explored in this proceeding. On the other hand, it is clear that the rates herein found just and reasonable are consistent with the cost of service and revenue limitation set out in the original Stipulation, when applied to test period sales.

And third, it is also true that Michigan Wisconsin did not adduce evidence showing costs related to estimated revenues of $114,869,391 applicable to a 12-month test period commencing September 1, 1961. It was not necessary or appropriate that it do so since, as explained above, the original Stipulation fixed the cost of service at $112,176,045 for the test year ending August 31, 1960, based on sales of 268,000,000 Mcf of gas. On the other hand, the facts do support the increase in billing demand units. For it is clear, among other things, that Michigan Wisconsin can readily deliver the increased daily volumes associated with the increased billing demand units; indeed the daily deliveries of gas and facilities necessary therefor have already been certificated. And it also is clear the customer companies need and can use the additional daily volumes of firm gas.

As to the original Stipulation's limitation on the Michigan Wisconsin revenues, it is clear that the examiner's rates do not permit Michigan Wisconsin to recoup revenues in excess of the approximately $112,000,000 approved cost of service, based upon test year Maximum Daily Quantities. In fact, the examiner's rates permit Michigan Wisconsin to recover only some $109,000,000 of revenue for the period of time the 185-day tariff was in effect, and only some $111,000,000 for the period that the 190-day tariff was in effect.

Further hearings respecting Docket No. RP60–9.—Our order issued herein on January 12, 1962, 27 FPC 29, provided in effect that the issues respecting the terms and conditions of Michigan Wisconsin's providing service from branch or lateral lines, and respecting whether Michigan Wisconsin should be required to set forth in its tariff the terms and conditions under which the company provides new or additional lateral line service, should be heard and determined subsequently in this proceeding. Also, a proposal for establishing zone rates for Michigan Wisconsin's Missouri and Iowa customers was postponed by agreement of the parties, subject to further hearings herein, with the understanding that any such zone rates will be effective prospectively only. Accordingly, our order hereto provides for such further hearings.

Other matters.—American Louisiana's and Michigan Wisconsin's rates shall be as prescribed in the order hererto, which also prescribes their remaining refund obligations reflecting, in part pertinent, the provisions of the original Stipulation.

American Louisiana's and Michigan Wisconsin's rates and refund obligations should remain subject to the provisions of paragraph (B) of the Commission's Opinion No. 363 and accompanying order issued September 17, 1962, in this proceeding, 28 FPC 482, respecting the treatment to be accorded the use of liberalized depreciation under Section 167 of the Internal Revenue Code and related matters, as provided in the order hereto.

The various exceptions filed herein include exceptions by staff to the first and second sentences [of the paragraph beginning, "Such percentages of . . . ."] on page 968 of the examiner's decision and footnotes appended thereto, on the ground that the discussion therein is incorrect or misleading in certain respects. We agree with staff, and these portions of the examiner's decision shall be deemed of no force or effect.

The exceptions not discussed herein are disposed of by the examiner's discussion or are immaterial to the result in this case. Except to the extent herein granted, all the exceptions filed are without substantial support in the facts

or reasonable basis in law and should be denied. The examiner's decision should be modified in accordance with this opinion and as so modified should, with this opinion, be adopted by the Commission as its decision in this case.

The Commission further finds:

(1) American Louisiana and Michigan Wisconsin are natural-gas companies under the Act, and their rates and charges involved in this proceeding are subject to Commission jurisdiction.

(2) American Louisiana's and Michigan Wisconsin's proposed increased rates and charges filed in this proceeding, as described more fully in the order hereto, are unlawful under the Act and should be disallowed.

(3) American Louisiana's and Michigan Wisconsin's just and reasonable rates for the future are as prescribed in the order hereto, and such rates should become effective immediately upon Commission approval of the revised tariff filings American Louisiana and Michigan Wisconsin are hereinafter ordered to make.

(4) American Louisiana and Michigan Wisconsin should make refunds as provided in the Stipulation and Agreement of July 12, 1961 (herein referred to as the original Stipulation), as approved by Commission order issued October 20, 1961, and otherwise, and as more fully provided in the order hereto.

(5) The presiding examiner's initial decision issued herein on September 27, 1962, should be modified as herein set forth and as so modified should, to the extent consistent herewith, be adopted by the Commission as of the date of issuance of this opinion. Exceptions to the examiner's decision not herein granted should be denied.

The Commission orders:

(A) American Louisiana's proposed increased rates and charges filed in Docket No. G–18419, contained in its FPC Gas Tariff, First Revised Volume No. 1, made effective as of November 1, 1959, by Commission order issued December 1, 1959, are unlawful and are hereby disallowed.

(B) American Louisiana shall, within 30 days of the date of issuance of this opinion, file revised tariff sheets containing a cost of service rate schedule in full conformity with its original Rate Schedule CS–1, which revised tariff sheets shall make proper reference to the Commission's current Uniform System of Accounts prescribed for Natural Gas Companies, shall become effective immediately upon Commission approval thereof, and shall continue in effect subject to further Commission order.

(C) Pursuant to paragraph 3 of the original Stipulation, American Louisiana has made the refunds required for the period from November 1, 1959 to December 31, 1960, and in accordance with paragraph 4 of the original Stipulation, its refund obligation up to December 31, 1960 under the aforesaid paragraph 3 is hereby terminated except as prescribed in the following and subsequently in this order:

(1) Pursuant to paragraph 4(a) of the original Stipulation, in the event American Louisiana's claimed deduction of expense for depreciation of rights-of-way is ultimately allowed for Federal income tax purposes, American Louisiana shall make additional refunds in the amount of $64.471 on an Mcf basis to what were its CD customers under the filing referred to in paragraph (A) above.

(2) Pursuant to paragraph 4(b) of the original Stipulation, in the event American Louisiana receives any refunds applicable to the period from November 1, 1959 to December 31, 1960, from Texas Gas Transmission Corporation as the result of the proceedings in Docket No. G–18886, American Louisiana shall, in

turn, refund such amounts on an Mcf basis to what were its CD customers under the filing referred to in paragraph (A) above.

(D) Pursuant to paragraph 5 of the original Stipulation, American Louisiana shall, for the period from January 1, 1961, until the effective date of the tariff sheets to be filed under paragraph (B) above, refund to its customers the difference between the revenues actually collected under its filed rates, and the revenues that would have been produced by the interim rates prescribed by the aforesaid paragraph 5, consisting of a CD–1 rate with a demand charge of $3.47 per Mcf and a commodity charge of 26.5 cents per Mcf and an SG–1 rate of 45 cents per Mcf, with interest at 6 percent per annum. Such refunds shall be made within 60 days of the date of issuance of this opinion.

(E) American Louisiana is and shall remain subject to the following refund requirements:

(1) Pursuant to paragraph 6(1) of the original Stipulation, the Commission reserves jurisdiction over the disposition of any refunds which American Louisiana may receive from Texas Gas Transmission Corporation as a result of the proceedings in Docket Nos. RP61–15 and G–18886 insofar as such refunds apply to the period subsequent to December 31, 1960.

(2) In conformity with paragraph (J) of the examiner's decision, if American Louisiana receives any refunds from any gas suppliers (except as provided in the preceding subparagraph (1)), applicable to the period subsequent to November 1, 1959, by virtue of any final Commission order, American Louisiana shall pass on its customers the amounts of such refunds, with interest, in conformity with the Commission's order approving American Louisiana's proposed plan for making such refunds, but such refunds shall not be required until the refunds received from the suppliers aggregate $165,000. American Louisiana shall file its plan for refunds with the Commission within 30 days of the date such refunds aggregate $165,000, and shall simultaneously serve such plan on its customers.

(F) Michigan Wisconsin's proposed increased rates filed in Docket No. G–12292, contained in its Fifth Revised Sheet No. 5 of its FPC Gas Tariff, Original Volume No. 1, permitted to become effective as of September 15, 1957 subject to the terms of the Commission's order issued November 8, 1957; its proposed change in rates filed in Docket No. G–17512, contained in its FPC Gas Tariff, Second Revised Volume No. 1, permitted to become effective as of March 1, 1960 by Commission order issued March 18, 1960; and its proposed increased rates filed in Docket No. RP60–9, contained in its First Revised Sheets Nos. 7, 11, and 13 and Second Revised Sheets Nos. 6 and 9, Second Revised Volume No. 1, permitted to become effective as of October 7, 1960 upon motion of Michigan Wisconsin, are unlawful and are hereby disallowed.

(G) Michigan Wisconsin's Third Revised Sheet No. 6 to its FPC Gas Tariff, Second Revised Volume No. 1, which was made subject to Commission order in this proceeding by order issued August 31, 1961, is also unlawful and is hereby disallowed, without prejudice to the filing by Michigan Wisconsin of a revised tariff sheet embodying the tariff provisions permitted by this opinion and order.

(H) Michigan Wisconsin shall, within 30 days of the date of issuance of this opinion, file revised tariff sheets to its FPC Gas Tariff, Second Revised Volume No. 1, containing the rates for the future prescribed in paragraph (I) hereof and otherwise conforming to this opinion and order, which revised tariff sheets shall become effective immediately upon Commission approval thereof, and shall continue in effect subject to further Commission order.

(I) Michigan Wisconsin's just and reasonable rates for the future are as follows:

Rate Schedule ACQ–1:

$3.05 per month per Mcf of billing demand
27.85 cents per Mcf of gas delivered
13.75 cents per Mcf of released gas purchased
10.00 cents per Mcf demand charge adjustment for impaired delivery
Alternative rate during development period: 45 cents per Mcf of gas delivered

Rate Schedule SGS–1:

For customers whose Maximum Daily Quantity is 6,000 Mcf or less
45 cents per Mcf for all gas delivered
10 cents per Mcf demand charge adjustment for impaired delivery

Rate Schedule OS–1:

30 cents per Mcf for all gas delivered

(J) Pursuant to paragraph 1 of the original Stipulation, Michigan Wisconsin has made the refunds required in Docket Nos. G–12292 and G–17512 for the period from September 15, 1957 to October 7, 1960, and accordingly its refund obligation in these dockets, and the proceedings in the said dockets, are terminated except as prescribed in the following and subsequently in this order:

(1) Pursuant to paragraph 1(a) of the original Stipulation, if Michigan Wisconsin's claimed expense for depreciation of rights-of-way is ultimately allowed for Federal income tax purposes, Michigan Wisconsin shall make additional refunds of the amounts of $65,439 and $70,385 for the 12 months ended August 31, 1958 and August 31, 1959, respectively, such refunds to be computed as set forth in subparagraph (3) below.

(2) Pursuant to paragraph 1(b) of the original Stipulation, in the event Michigan Wisconsin receives any refunds applicable to the period from September 15, 1957 through August 31, 1959, from Phillips Petroleum Company as a result of the proceedings in Docket No. G–13069, Michigan Wisconsin shall, in turn, refund such amounts to its customers, such refunds to be computed as set forth in subparagraph (3) below.

(3) Pursuant to paragraph 1 of the original Stipulation, the amounts of any refunds to each customer under subparagraphs (1) and (2) above shall be computed on the basis of the volumes of gas purchased by such customer during the period to which the refund applies.

(K) Michigan Wisconsin shall, within 60 days of the date of issuance of this opinion, pass on to its customers all refunds received from American Louisiana in Docket No. G–18419 prior to the date of issuance of this opinion, with interest as received from American Louisiana, plus interest at the rate of 7 percent per annum from the date Michigan Wisconsin received such refunds; and Michigan Wisconsin shall compute the amount of such refunds to its customers as set forth in subparagraph (3) of paragraph (J) above.

(L) Michigan Wisconsin shall, for the period from October 7, 1960, to the date the rates for the future prescribed in paragraph (I) of this order become effective, refund to its customers the difference between the revenues collected under its rates presently in effect as provided in paragraph 2 of the original Stipulation; and the revenues it would have collected under the rates prescribed for the future in paragraph (I) hereof, plus interest at 7 percent per annum. Such refunds shall be made within 60 days of the date of issuance of this opinion.

737–369—64——63

(M) Michigan Wisconsin is and shall remain subject to the following rate and refund requirements:

(1) Pursuant to paragraph 6(2) of the original Stipulation, the Commission reserves jurisdiction over the disposition of any refunds Michigan Wisconsin may receive from Phillips Petroleum Company as the result of the proceedings in Docket Nos. RP60–349 and G–19032, insofar as such refunds apply to the period subsequent to October 6, 1960.

(2) In conformity with paragraph (M) of the examiner's decision, if any of Michigan Wisconsin's gas suppliers are required by Commission order to reduce their rates to Michigan Wisconsin below the rates used to compute the cost of service shown in Schedule MW–II of the original Stipulation, then Michigan Wisconsin shall, at such time as the total reduction in such rates aggregates $250,000, file with the Commission and satisfactory to it, tariff sheets reflecting the effect of such reduced rates. Michigan Wisconsin shall, when it files any such revised tariff sheets with the Commission, simultaneously serve them on its customers.

(3) In conformity with paragraph (L) of the examiner's decision, if Michigan Wisconsin receives any refunds from any gas suppliers applicable to the period subsequent to September 15, 1957, by virtue of any final Commission order, Michigan Wisconsin shall pass on to its customers the amounts of such refunds, with interest, as the Commission's order approving Michigan Wisconsin's proposed plan for making such refunds may prescribe, but such refunds shall not be required until the refunds received from the suppliers aggregate $265,000. Michigan Wisconsin shall file its plan for making such refunds with the Commission within 30 days of the date such refunds aggregate $265,000, and shall simultaneously serve such plan on its customers.

(N) American Louisiana and Michigan Wisconsin shall, within 75 days of the date of issuance of this opinion, report to the Commission in writing and under oath the details of their calculations underlying the refunds herein ordered, together with copies of releases from their customers respecting such refunds.

(O) American Louisiana and Michigan Wisconsin, and their rates and refund obligations, are and shall remain subject to the provisions of paragraph (B) of Commission Opinion No. 363 and accompanying order issued September 17, 1962, 28 FPC 482, respecting the treatment to be accorded the use of liberalized depreciation under Section 167 of the Internal Revenue Code in computing federal income taxes and related matters, as there set forth.

(P) American Louisiana's proceeding in Docket No. G–18419, and Michigan Wisconsin's proceeding in Docket Nos. G–12292 and G–17512 are hereby terminated, subject to the terms and conditions of this order and of future Commission orders as provided hereinabove.

(Q) Further hearings shall be held in Michigan Wisconsin's Docket No. RP60–9 pursuant to a future Commission order, respecting (1) the terms and conditions of Michigan Wisconsin's providing service from branch or lateral lines, and whether Michigan Wisconsin shall be required to set forth in its tariff and the terms and conditions under which the company provides new or additional service; and (2) whether zone rates should be established for Michigan Wisconsin's system to be effective prospectively.

(R) The presiding examiner's initial decision issued herein on September 27, 1962, is hereby modified as set forth herein and as so modified is adopted by

the Commission to the extent not inconsistent herewith. Exceptions to the examiner's decision not herein granted are denied.

Chairman Swidler and Commissioner Ross *concurring, filed* separate statements.

SWIDLER, Chairman, *concurring:*

I agree with Commissioner Ross' conclusion that the record in this case would support a higher allocation of the fixed costs associated with storage to demand than the 50 percent used in the majority opinion. His allocation of 65 percent to demand and 35 percent to commodity appears to be reasonable. I also concur with the result reached by the majority for the reason that this allocation of storage costs would make almost no difference in the final rates of Michigan-Wisconsin.

ROSS, Commissioner, *concurring:*

My disagreement with the majority opinion relates only with its allocation of the fixed costs associated with underground storage equally between demand and commodity.

Initially, it is important to recognize that any allocation of fixed storage costs upon a basis other than use could well serve to discourage distributors or pipelines from developing additional underground storage facilities. The danger is that future capacity requirements would be satisfied solely by the construction of additional (and costly) transmission facilities in situations in which underground storage would otherwise have been developed. Such a result should be avoided in view of the substantial economies inherent in satisfying the higher winter requirements for gas by underground storage *vis a vis* transmission facilities. Such economies were lucidly described in a paper delivered by H. H. Fitzgerald at the American Gas Association General Management Section Meeting in Charleston, South Carolina on March 21, 1961.[1]

The majority's position on this issue is based on certain misconceptions regarding the nature and use of underground storage. First, the majority states that "* * * underground storage facilities, like the transmission facilities, contribute to both the peak and annual service of the company." The majority adds that the use of underground storage improves the company's overall service for the entire year in a way which could only be accomplished otherwise by the construction of transmission facilities, which would be classified 50% to demand and 50% to commodity.

Michigan Wisconsin's underground storage facilities do contribute to its ability to provide service during periods of maximum demand. They do not, however, contribute to its ability to provide service on an annual basis. Michigan Wisconsin's FPC Form No. 2 for 1961 reveals that 52,040,411 Mcf of gas of a total of 52,171,858 Mcf was injected in storage during the seven month period comprising its valley season. To the extent that its transmission facilities are used during this period to replenish its storage, its ability to sell interruptible gas during this period is decreased. This is reflected in the provision in Michigan Wisconsin's rate schedule which limits the right of firm customers to take an annual volume of gas equal to only 190 days of demand requirements. Thus, it is clear that Michigan Wisconsin's storage facilities do not contribute to its provision of service "for the entire year" as the majority assumes. To the contrary, its storage facilities detract from its ability to provide annual service

[1] Reprinted in the February 1962 issue of *Gas.*

in order to serve more effectively its firm customers during periods of maximum demand.[2]

The fact that the capacity requirements satisfied by storage could otherwise be met by transmission facilities is quite beside the point. Transmission facilities are essentially dissimilar from underground storage facilities for the simple reason that the former can provide service for every day of the year in contrast with the latter whose effective service use is limited to the winter season.

The majority further states that there is little resemblance between a propane peaking service which is used only for a few of the coldest days of the winter and underground storage which is generally used for five winter months. Actually, the only difference between the two is the variances in time over which these services are used. The significant point is that the purpose of both services is to satisfy the requirements of firm customers during periods of high demand.[3] It is true that the use of propane peaking may coincide fairly close with the three day peak used for allocation purposes in rate cases whereas the same cannot be said of underground storage. This merely indicates that the use of a three day peak for the allocation of fixed storage costs would be unrealistic and that a longer period should be considered. Surely our methods for allocating costs associated with a given facility should be based upon its use, and not vice versa. If allocation is to be realistic, we must devise new approaches to new developments. We should not try to jam an approach once justified upon completely and different set of circumstances, on new and different technology.[4]

The extent to which more of the fixed costs related to underground storage should be allocated to demand necessarily depends on the manner in which the storage is used and on the applicable rate schedules. On some pipeline systems, underground storage is dedicated to particular customers under separate rate schedules applicable to storage gas only. In those situations, storage performs an exclusively peaking function which is reflected by the applicable rate schedules. This being the case, the fixed costs of storage should be allocated to demand.

Michigan Wisconsin's underground storage occupies a somewhat different position. Although the record is not particularly helpful, it does appear that the company's storage is used principally to satisfy the firm requirements of its customers during the winter season. The Company's FPC Form No. 2 of 1961 shows that 34,822,494 Mcf of total withdrawals of 38,725,865 Mcf were taken during the five winter months. Further evidence of the peaking use of Michigan Wisconsin's storage gas is reflected in the ratio of storage gas withdrawn to annual sales of 15.2%. In my opinion, this information although concededly incomplete, justifies an allocation of more of the fixed costs associated with storage to the demand category to the extent of 65% with the remaining 35% allocated to commodity. However, I concur with the result reached by the majority because this allocation would produce only minimum differences in the final rates with Michigan Wisconsin. Moreover, these rates were determined on the basis of other considerations with which I agree.

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[2] The effectiveness of this tariff limitation is clouded by the fact that Michigan Wisconsin appears to have delivered gas under its overrun rate schedule ultimately destined for interruptible customers at a time when it should have been filling its storage.

[3] Indeed, it appears that the demand requirements of the entire winter season, in contrast to the few coldest days, are of major concern to distributors. This point is illustrated by a presentation made at the 1959 American Gas Association Production Conference which is reprinted in the November 1959 issue of the *American Gas Journal*.

[4] In the original *Atlantic Seaboard Case*, 11 FPC 43, no allocation of underground storage costs was involved because the company had no underground storage.

INITIAL DECISION
UPON ISSUE OF PROPER DESIGN OF RATES

(Issued September 27, 1962)

CONTENTS OF DECISION

	Page
APPEARANCES	933
I. INTRODUCTORY STATEMENT	955
Historical Background	955
The Rate Filings	956
Pretrial Conference and Hearings	956
The Resumed Hearings	957
II. THE ISSUES	958
The Commission's Order as to Rates of Return	958
III. THE DESIGN OF THE RATES	959
A. American Louisiana	959
Contract-Demand Form of Tariff	959
Demand and Commodity Charges	960
Implementation of the Approved Stipulation	961
B. Michigan Wisconsin	961
The Rate Filings	961
The Periods of Time	961
The Stipulated Rates	962
The Staff's Proposed Equalization of Monthly Contract and Billing Demands	964
Michigan Wisconsin's Alleged September 1, 1961, Rate Increase	965
The Atlantic Seaboard Formula	968
The Lowest Reasonable Rates	971
IV. ADDITIONAL FINDINGS AND CONCLUSIONS	971
V. ORDER	972

APPENDIX EXHIBITS A, B AND C.

INTRODUCTORY STATEMENT

FREER, *Presiding Examiner:* Involved herein under Section 4 (d) and (e) of the Natural Gas Act (Act) are three rate filings by Michigan Wisconsin Pipe Line Company (Mich Wis) and one by American Louisiana Pipe Line Company (Am Lou), all of which became effective subject to refund following suspension by the Commission.

Historical Background

Mich Wis was originally certificated November 30, 1946 and January 7, 1947 in Docket No. G-669 (5 FPC 953 and 6 FPC 1) to build and operate a natural gas pipeline from north Texas to the Austin Storage field[1] near Big Rapids, Michigan, with a branch line to Milwaukee and lateral lines to other Wisconsin communities, to Marysville, Missouri, and to Mt. Pleasant, Burlington, Fort Madison and Keokuk, Iowa.

Am Lou was originally certificated October 1, 1954 and May 7, 1956, in Docket No. G-2306 (13 FPC 380 and 15 FPC 23) to construct and operate a natural gas pipeline from Southern Louisiana to Detroit, Michigan, with most of its initial

[1] From where Austin Field Pipe Line Company was to make delivery to Michigan Consolidated Gas Company (Mich Con) for service to Detroit and other Michigan communities (6 FPC 1, 9-10).

capacity of 380,000 Mcf per day allocated to two affiliates[2] (*viz.*, 100,000 Mcf to Mich Wis and 200,000 to Mich Con). Other customers are: Ohio Valley Gas Corporation; Lincoln Natural Gas Company, Inc.; Paris-Henry County Public Utility District; Northern Indiana Public Service Company; and Consumers Natural Gas Corporation.

The Rate Filings

The four rate filings are:[3]

(1) Docket No. G–12292 involves an increase in the straight commodity rate of Rate Schedule G–1 to 37.5¢ per Mcf filed by Mich Wis on March 1, 1957, and made effective subject to refund as of September 15, 1957.

(2) Docket No. G–17512 involves FPC Gas Tariff Second Revised Volume No. 1 including Rate Schedule ACQ–1 a demand-commodity form of rates filed by Mich Wis on November 19, 1958, which became effective subject to refund on March 1, 1960, with a demand charge of $2.62 per Mcf; a commodity charge of 24¢ per Mcf; a development rate of 39¢ per Mcf; a SGS–1 rate of 39¢ per Mcf; and an OS–1 rate of 24¢ per Mcf.[4]

(3) Docket No. RP60–9 involves an increase in all Mich Wis rates, filed April 6, 1960, and made effective subject to refund on October 7, 1960. The demand charge under the ACQ–1 Rate Schedule became $3.50 per Mcf and the commodity charge 26¢ per Mcf, with a development rate of 46¢ per Mcf; the SGS–1 rate was increased to 46¢ per Mcf and the OS–1 rate to 26¢ per Mcf. These rates are currently effective.

(4) Docket No. G–18419 involves a demand-commodity form of tariff filed by Am Lou on April 6, 1959[5] which became effective subject to refund as of November 1, 1959. The tariff includes a CD–1 rate consisting of a demand charge of $3.61 and a commodity charge of 27¢ per Mcf, with a development rate of 43¢ per Mcf, and a Small General Service (SG–1) rate of 48¢ per Mcf. These rates which constituted an increase in level as well as a change of form are currently in effect.

Pretrial Conference and Hearings

By order issued August 31, 1961, these four dockets were consolidated and the hearing set for September 21, 1961. This order also provided for a pretrial conference to determine the issues to be litigated and to enable the parties to agree to or to oppose a stipulation agreement (Exhibit "A" in the Appendix hereto) together with related costs of service (dated July 14, 1961), submitted to the Commission as the result of a series of conferences) and designed to dispose of all issues except future rate design (T. 17–37). Certain questions

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[2] Mich Wis, Am Lou, Mich Con, Austin Field Pipe Line Company, Milwaukee Gas Light Company are, and Madison Gas & Electric Company (Madison), formerly was interrelated parts of the American Natural Gas System, formerly American Light and Traction Company (*Cf.* 6 FPC 1, 5, 9, 10, 14 and 34).

[3] All are increases in previous rates; none are for initial service.

[4] During the interim period March 1–August 31, 1960, the maximum average rate of 37.5¢ per Mcf, is provided to facilitate the transition by Mich Wis's customers from a straight commodity rate to the demand-commodity rates. The form of tariff was approved by the Commission on September 30, 1959, with certain modifications including the provision for Small General Service (SGS–1) and Overrun (OS–1) rate schedules (22 FPC 603). The rates and refunds involved in both (1) and (2) then were settled by stipulation spread upon the record. (T. 20, 21, 27–28), with the rate of return yet to be fixed by the Commission. (Order of October 20, 1961; n. 10, *infra.*)

[5] Nearly two years after the rejection (December 13, 1957) in Docket No. G–12414 of a previous demand-commodity form of tariff without prejudice (T. 394) to renewal of the request therefor after two years operating experience or a test year period based on at least one year's actual experience (18 FPC 795, 797).

as to the stipulation which were raised at the pre-hearing conference by various interveners[6] were certified by the Examiner to the Commission.

The Commission considered these questions and objections; its order of October 20, 1961, modified the stipulation accordingly; and found the modified stipulation to constitute "a reasonable settlement of these proceedings," disposing of all issues except for questions of rate design; and for rates of return which it was agreed should be presented to the Commission for decision upon basis of briefs and an oral argument.[7] A resumption of the hearing was directed also by the Order of October 20, 1961 for determination of the rate design issue and decision was reserved therein as to the rate of return issue. Having been directed to state for the record whether the stipulation and agreement as modified was acceptable all parties agreed thereto (T. 69–84) except Michigan Gas & Electric Company, Iowa Southern, North Central, Keokuk Gas Service Company and American Gas Company, who neither agreed nor disagreed. (T. 75, 78, 81). The order of October 20, 1961, provided for incorporation into this record by reference of data (see: T. 85–88) relevant to the issue of Mich Wis' rate of return "generally" and for the locked-in periods involved in Docket Nos. G–12292 and G–17512, which issue was reserved for determination by the Commission after consideration of briefs and oral argument.

The order of January 12, 1962, severed the issue of Mich Wis' lateral line policy which will become a second phase of Docket No. RP60–9. A proposal for establishing zone rates for Mich Wis' Missouri and Iowa customers (T. 892–93), was postponed by agreement of the parties with the understanding that such matter may become a third phase; also that any zone rates which may result will be effective prospectively only (T. 1392–93).

The Resumed Hearings

As directed by said order the hearing reconvened on October 31, 1961, and sessions thereof were held through December 1, 1961. Meantime as a result of a number of informal conferences two supplemental stipulations dated November 8 and December 1, 1961, respectively, designed to settle the remaining issues (T. 370–73 and 1067–69), were entered into by the respondent companies, the Staff and a large majority of the other parties—all except Michigan Gas and four Iowa customers (See T. 374–84, 392–94, 412–13).

Upon motion and without opposition to such procedure, certification of the supplemental stipulations (T. 1070–73, 1101–02), with recommendation that they be accepted and approved, was made to the Commission on December 11 and 12, 1961. By order issued January 12, 1962 the Commission rejected the supplemental stipulations for "lack of agreement of all parties" and remanded the matters to the Presiding Examiner for determination "in ordinary course."

Pursuant to this order of January 12, 1962 and a notice of hearing by the Examiner, additional hearings began on January 30, 1962 and were concluded on February 20, 1962, with the respondents, the Staff, Iowa-Southern Utilities Company (Iowa-Southern) North Central Public Service Company (North Central), Koekuk Gas Service Company, Madison Gas & Electric Company (Madison), and Wisconsin Fuel & Light Company presenting witnesses, and with Michigan Gas offering a number of items of evidence by reference and like the

[6] Interveners participating in the pre-trial conference and the hearings included the State Commissions of Illinois, Michigan and Wisconsin, the County of Wayne, Michigan, City of Detroit and other municipalities, the coal interests and thirty-odd customers.

[7] The order of October 20, 1961 became final in the absence of any application for rehearing. These matters settled by the July 14, 1961 stipulation, including the rates and rate provisions for Am Lou and the costs-of-service for both Companies, are not in issue herein (T. 68–69, 75 *et seq.*).

coal interests, all of these parties participated extensively by the way of cross-examination of witnesses produced by the other parties.

Pursuant to opportunity extended to all parties, initial briefs were filed by the Respondents, the coal interests and twelve other interveners,[8] and reply briefs were filed by the Respondents, the Staff, the coal interests, Michigan Gas, Iowa Southern and North Central Company.

THE ISSUES

The stipulation of July 14, 1961, as modified and approved by the Commission's order of October 20, 1961,[9] limited the issues to be determined herein to the proper design of rates for each of the companies.[10] The propriety of a two-part contract-demand form of tariff for Am Lou, heretofore disapproved on December 13, 1957 without prejudice to renewal after 2 years of operating experience, (18 FPC 795) again is presented herein.[11]

The allocation of costs between demand and commodity components of the rates (T. 25) and the proper relation of Mich-Wis' billing demands and contract demands[12] also are presented for determination herein. The amounts to be refunded by the companies is a corollary to the determination of the reasonable rates.

The Commission's Order as to Rates of Return

Pursuant to the Commission order of October 20, 1961, a number of items of evidence by reference bearing upon the proper rates of return on rate base and the proper rate of return on deferred income tax accruals for Mich Wis in Dockets Nos. G–12292, G–17512 and RP60–9 and for Am Lou in Docket No. G–18419 were included in the record; also pursuant to the said order briefs were submitted to the Commission on or before December 15, 1961. Oral argument on the issues of rate of return was held August 3, 1962.

By its order issued September 17, 1962, the Commission disposed of the issue of rates of return by finding six percent and six and one-half percent as the fair return for Am Lou and Mich Wis respectively, for all of the periods and filings here under consideration; but deferring decision respecting the treatment to be accorded the use of liberalized depreciation under Section 167 of the Internal Revenue Code in the computations of Michigan Wisconsin's and American Louisiana's federal income taxes and of accruals for deferred taxes resulting therefrom in the determination of their rates of return.

As has been indicated, by order issued October 20, 1961, the Commission approved, (with modifications to which no objection was made) the costs of service, aside from rates of return for use herein with respect to past and future periods. No adjustments therein are therefore necessary in this decision.

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[8] As listed in footnote 2 on page 2 of the Answering Brief of the Staff they were (1) Michigan Public Service Commission; (2) Wisconsin Public Service Commission; (3) County of Wayne, Michigan; (4) Michigan Gas & Electric Company; (5) North Central Public Service Company; (6) Michigan Gas Utilities Company; (7) Madison Gas and Electric Company; (8) Wisconsin Natural Gas Company and Wisconsin Michigan Power Compny; (9) Wisconsin Fuel and Light Company; (10) Wisconsin Power and Light Company; (11) Wiscosin Public Service Corporation; and (12) Iowa-Southern Utilities Company.

[9] The provisions of the several stipulations are hereinafter discussed in context of filings affected.

[10] The Commission's decision as to the rate of return issue is hereinafter set forth.

[11] By order issued (in Docket No. G–17512) on September 30, 1959, such a form of tariff was approved for Mich Wis (22 FPC 603).

[12] Including Staff witness Hertz's theory of synchronizing or equating billing and contract demand and the contentions of Michigan Gas that the increased revenues flowing from increased billing demands constituted an unauthorized increase in rates.

THE DESIGN OF THE RATES

A. AMERICAN LOUISIANA

Contract-Demand Form of Tariff

The filing herein in Docket No. G–18419 marks the third time that Am Lou has sought acceptance of a two-part demand-commodity form of tariff. The first rate filing proposing a two-part type of tariff was rejected on July 20, 1956, because the terms of its certificate required a cost-of-service type of tariff for the initial years of service (16 FPC 779, 781; modification denied 16 FPC 944). A second two-part rate filing in Docket No. G–12414 was disallowed on December 13, 1957 by a 3 to 2 decision, with two Commissioners favoring affirmance of the Presiding Examiner's initial decision (issued August 7, 1957) which had "accepted the CD form of rate." (18 FPC 795–96). The disallowance was specifically recited to be "without prejudice, however, to Am Lou's future filing of a contract demand schedule for service to these (affiliated) customers" (Mich Wis and Mich Con.).

Reciting that Am Lou submitted its cost data in support of a two-part rate on the basis of only six months of actual service beginning with September of 1956,[13] with the remainder of the test year through August 1957 being estimated, this decision stated:

> At such time as it shall have had at least two years of operating experience or at least show a test period based on twelve months which would be indicative of future operations, we would consider the request again (page 797).

Am Lou supports its present two-part tariff filing with almost six years of "operating experience" and with a stipulated cost-of-service which was approved by the Commission's order of October 20, 1961, along with a 1960 test year as "indicative of future operations" (T. 32 *et seq.*, and Appendix A to Staff's brief).

The only opposition to this form of tariff comes from Michigan Gas.[14] Michigan Gas is a customer of Mich Wis but it is not a customer of Am Lou. The Staff briefs (initial pp. 12–13 and answering p. 2, fn. 3) state the Staff's present policy to be that of neither supporting nor opposing this form of tariff,[15] although the July 14th stipulation approved by the Commission's order of October 20, 1961, inferentially at least accepts such a form of tariff (T. 24).[16]

Michigan Gas' opposition to a contract-demand form of rate for Am Lou is rested upon the small number of Am Lou's customers and the close affiliation of its two principal customers (Mich Wis and Mich Con), factors not affecting Mich Gas and obviously "borrowed" from the Commission's early decision in the matter (16 FPC 779).

As previously noted Michigan Gas is a customer of Mich Wis. Self-interest would appear logically to enlist Michigan Gas' support of Mich Wis' ability to

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[13] Am Lou commenced operation in August 1956.

[14] The Respondents' initial brief deals only generally with this filing at pages 3, 7, 17 and 49; pages 17–23 of the reply brief, however, specifically answer Michigan Gas' opposition which is stated on pages 54–59 of its initial brief. Pages 16–17 of reply brief of Mich Gas also are in opposition.

[15] Staff's brief (pages 27–28) makes clear that if such form of tariff is accepted the demand and commodity charges in Appendix C to the said brief are those presently recommended by Staff for inclusion therein. (They are the same as those in the supplemental stipulation) (T. 371).)

[16] That stipulation contains specific demand and commodity charges of $3.47 and 26.5¢ for Am Lou for the interim period beginning January 1, 1961 (T. 24).

buy Am Lou's gas under a more stable contract-demand rate rather than under a cost-of-service rate that fluctuates with changes in the seller's costs.

Michigan Gas is not a customer of Am Lou and its inferences as to Am Lou's possible undue preference of its two affiliates and its concomitant possible undue prejudice against its five non-affiliated distributor customers have been previously presented to and ruled upon by the Commission in several cases, most notably in the *Midwestern Gas Transmission* case (22 FPC 1157, 1163; see also 22 FPC 603; 6 FPC 1, 9, 34).

The contract-demand form of tariff is normal for established pipeline companies (see; Secs. 154.38 (d) (i) and 154.52 (a) Regulations under the Act) serving others than affiliates.

Am Lou has had almost six years of actual operating experience. Its "initial few years of service" (18 FPC 745) are past. Its costs-of-service have been agreed upon. The reasons (16 FPC 779; 18 FPC 795) given by the Commission for previous rejections of such a tariff for Am Lou no longer existing, the Examiner finds that the evidence requires his acceptance at this time of Am Lou's proposal for the adoption of the two-part contract-demand form of tariff.

Demand and Commodity Charges

Having determined that a contract-demand form of rate is proper for American Louisiana, and the July 14th stipulation already having fixed the rate levels for the interim period from January 1, 1961 to the effective date of rates for the future (T. 24), the next step is to fix the proper rate levels to be established for the future for contract-demand service and for overrun service.

The Staff's initial brief not only sets out, in Appendix A, its classification of the agreed-upon cost-of-service for Am Lou, based on a test year ended December 31, 1960, normalized for known changes, (as summarized from Staff Exhibit No. 19), but also, in Appendix C, the rates and charges ($2.325 and 30.1¢ as in the First Supplemental stipulation) and the proposed tariff sheets which it recommends for Am Lou's contract-demand tariff for the future.[17]

Am Lou accepts and supports the First Supplemental stipulation's rates (T. 371) stating that the testimony and exhibits of its witnesses (Ransom and Lynch) supply support for these as well as for those proposed in its filing. The rate design witness (Hertz) for the Staff supports the rate provisions of this supplemental stipulation [18] (T. 1745–48).

None of the parties offers evidence or argument in opposition to these stipulated contract-demand and overrun rates which have no "tilt" (T. 2180–81, 2221) being designed in strict conformity to the so-called Atlantic Seaboard formula (11 FPC 43).[19]

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[17] The said brief states this recommendation, in pertinent part at pages 27–28, as follows:

> Staff recommends that the Examiner and the Commission find:
>
> (1) That the evidence of record * * * supports the three stipulations * * *, and
>
> (2) That should the Examiner and the Commission determinine that a contract-demand form of rate is proper for American Louisiana, that the rate levels and the rate provisions set out in the proposed tariff sheets contained in Appendix C attached hereto are just and reasonable and that American Louisiana be required to file sheets containing such provisions to be included in its tariff; * * *.

* * * * * * *

[18] Am Lou's tender in Docket No. G–18419 was a demand charge of $3.61 and a commodity and overrun rate of 27¢ per Mcf, and the July 14, stipulation's provisions were $3.47 and 26.5¢ (T. 24).

[19] Mich Gas (brief p. 9) and the coal interests (brief p. 23) strongly advocate contract-demand rates without "tilt" or deviation from the Atlantic Seaboard formula not only as a general principle but particularly for Mich Wis to the end that the commodity component for it would approximate 30¢ per Mcf.

In summary, the evidence supports the stipulated rate levels and accompanying rate provisions; there is a lack of opposition thereto,[20] and their adoption herein, clearly is warranted.

Implementation of the Approved Stipulation

The approved stipulation provided in pertinent substance as to Am Lou:

(1) (a) For the period to December 31, 1960, disposition to be on the basis of the agreed-upon cost of service based on the calendar year 1960 (T. 22, 32–33).

(b) Refund of $2,044,961 (3¢ per Mcf to SGS and 1.0762¢ per Mcf to CD customers) to be made for said period (T. 22–23), increased by such part of $56,985.09 (F.P.C. Release No. 12040, June 5, 1962) refunded to it by Texas Gas Transmission Corporation as relates to this period, with a possible further increase of $64,471 should Am Lou's rights of way depreciation be permitted to be expensed in said period for income tax purposes (T. 23–24).

(2) (a) For the interim period (from January 1, 1961 to the effective date of the future rates herein determined), filing to be made of CD–1 Rate Schedule with $3.47 demand and 26.5¢ per Mcf commodity and of SG–1 Rate Schedule with 45¢ per Mcf (T. 24).

(b) Refund to be made of the difference between revenues actually collected and amounts which such interim rates would have generated for this interim period; also of such part of the said Texas Gas Transmission Corporation refund as relates to said period (T. 25).[21]

Implementation of this reasonable settlement by the Examiner's decision should now be made herein; and compliance therewith is hereby ordered, specifically Am Lou shall forthwith make the refunds and file the tariff schedules containing the rate and rate provisions agreed upon in the said stipulation.

B. MICHIGAN WISCONSIN

The Rate Filings

As hereinabove noted the rate filings involved are: (1) an increased straight line rate, applicable to all customers, which became effective September 15, 1957, subject to refund, in Docket No. G–12292; (2) a superseding tariff containing new forms of rates including a two-part, demand and commodity rate for large customers, a small general service schedule and an overrun schedule, all of which became effective on March 1, 1960, subject to refund, in Docket No. G–17512; and (3) increase in all the tariff rates filed in (2) above, which became effective on October 7, 1960, and are currently in effect subject to refund, in Docket No. RP60–9.

The Periods of Time

Michigan Wisconsin's said three rate filings cover, respectively, the following periods of time, *viz:* (1) the locked-in impoundment period from September 15, 1957, the effective date of the filed rates in Docket No. G–12292, to March 1, 1960; (2) the locked-in impoundment period from March 1, 1960, the effective date of the filed rates in Docket No. G–17512, to October 7, 1960: and (3) the interim period from October 7, 1960, the effective date of the filed rates in Docket No. RP60–9, to the effective date of the rates for the future herein established.

[20] The July 14th stipulation (T. 19–31), including (T. 24) demand and commodity rates for Am Lou for the interim period, as modified and approved by the Commission, was agreed upon by all the parties (T. 68–84) except three interveners who neither agreed nor disagreed (T. 75, 78, and 81). The November 8th first supplemental stipulation (T. 370–73), including (T. 371) rates for the future recommended by the Staff, was acceptable not only to the Respondent and the Staff but also to most of the interveners (T. 374–84, 392–94 and 412–413).

[21] The October 20, 1961 order modified the stipulation *inter alia* to provide for passing on to customers all refunds received by Am Lou (and Mich Wis) from suppliers (T. 68–69).

The Stipulated Rates

The original stipulation as modified by the first and second supplemental stipulations provides in pertinent part as to Mich Wis:

(1) (a) For the approximately 36 months from September 15, 1957, to October 7, 1960, in Docket Nos. G–12292, G–17512 (*supra*, page 956) disposition to be on the basis of cost of service for the three twelve month test periods ended August 31, 1958, August 31, 1959, and August 31, 1960 (T. 20–21, 27–28).

(b) Refund of $330,034 to be made with possible increases of $65,439 and $70,385 for the test periods ended August 31, 1958 and August 31, 1959, respectively, should claimed deductions for rights of way depreciation be allowed for Federal income tax purposes; and of the amount of any refunds (see note 20, *supra*) which may be received from Phillips Petroleum Company in Docket No. G–13069 (T. 21–22).

(2) (a) For the period from October 7, 1960, to the effective date of rates provided in the First Supplemental Stipulations, billings to customers to be on the basis of the said filed rates with the proviso that total billings to each customer not to exceed billings that would result from said rates in the First Supplemental Stipulation (T. 1068).

(b) Refund to be made (pursuant to Second Supplemental Stipulation) to each customer of any excess of total revenues received under the filed rates in Docket No. RP60–9 during such period over total revenues which would have been received from such customer under the rates provided in said First Supplemental Stipulation (T. 1069; see also ft.n. 20, *supra*).

(3) (a) For the future (as provided in First Supplemental Stipulation) a demand charge of $3.05 per Mcf; a commodity charge of 27.85¢; a development rate of 45¢ per Mcf; OS–1 (Overrun) rate of 30¢ per Mcf; and an SGS–1 rate of 45¢ per Mcf available to any distributor having an MDQ of 6,000 Mcf or less (T. 371–72).

The Evidence in Support of the Stipulated Rates

The rate provisions of the Original Stipulation, as modified by the order of October 20, 1961, and by the First and Second Stipulations (herein referred to as the recommended rates) are supported on this record by Mich Wis and the Staff based upon evidence adduced by the Staff. Several interveners also support said rates, but only the Staff presented supporting witnesses and exhibits.[22]

The Interveners' Support of the Filed Rates

Counsel for Mich Wis announced orally Mich Wis' support of the recommended (stipulated) rates, but pages 7 and 11 of Respondents' Memorandum Brief in Support of the Supplemental Stipulations indicate a continued preference for the filed rates, and its witnesses and exhibits support Docket No. RP60–9's filed rates.

The testimony of witnesses presented by Mich Wis' Iowa and Wisconsin customers supports the filed rates, particularly the lower commodity portion thereof,[23] and opposes the Staff's (First Supplemental Stipulation's) recommended rates. Almost all of the interveners accepted the said First Supplemental

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[22] The Staff presents the testimony of witnesses Craig, Chin, and Hertz, and exhibits Nos. 20 and 22. Briefs filed by the County of Wayne and by the State Commissions of Michigan and Wisconsin question the applicability to Mich Wis of the so-called Atlantic Seaboard formula, but otherwise generally support these rates.

[23] Opposition of these customer interveners to the Staff rates rest on the increase in the commodity and overrun rates (from 26¢ to 27.85¢ and to 30.0¢, respectively) whereas Michigan Gas and the coal interest urge generally a strict adherence to the Atlantic Seaboard formula's commodity rate of 29.67¢ and particularly a still higher overrun rate of not less than 33¢.

Stipulation's rates for Mich Wis, (the rates now recommended by the Staff) but when that stipulation failed of Commission approval they generally have reaffirmed their preferences for the filed rates (see T. 374–83). Michigan Gas and the coal interests oppose both the filed and recommended rates.

North Central, among other customer interveners, urges strongly from the evidence that the filed rates are reasonable and that the Staff's recommended rates unjustly discriminate against Mich Wis' high load factor customers.

The Commission's order of October 20, 1961 creates an inference that, subject to its subsequent determination of a proper rate of return, the level of Mich Wis' revenues generated by the filed rates is reasonable. After remand, Mich Wis offered evidence in support of the said filed rates. Its witness Ransom is a recognized rate expert. Moreover, he originally designed Mich Wis' two-part rate structure and is familiar with its operations under such rate structure (T. 161–64). In Mr. Ransom's judgement the filed rates should be found to be just and reasonable and neither unduly discriminatory nor unduly preferential.

The Staff presented evidence suggesting the adoption of an alternative rate structure herein.[24] Its witness Hertz is likewise a recognized rate expert. It is important to note that Mr. Hertz did not testify that the filed rates are unreasonable, unjust, or unduly discriminatory or preferential. As hereinafter indicated, his testimony is to the effect that filed rates deviate to a greater degree from the rates that result from the application of the so-called Atlantic Seaboard formula than do the alternative lower reasonable rates recommended by him, and hence in his judgment the latter "would be *more reasonable* at this time" (T. 1750). (Emphasis supplied.)

Mich Wis' distributor customers generally support the filed rates urging that the Staff's recommended rates and revised tariff provisions (particularly its proposed restrictive contract demands are *unduly preferential* of low load factor customers and *unduly prejudicial* to high load factor customers needing the use of a larger portion of their MDQ throughout the year (T. 864).[25]

Based upon his studies and his classification of the Respondent's costs between demand and commodity in Exhibit 7.[26] Mr. Ransom insists that the filed rates (a demand charge of $3.50 and a commodity charge of 26¢) are the correct rates (T. 177, 1162). He believes that 26¢ for commodity and overrun charges are the maximum rates under which distributors consistently can sell gas to industrial customers (T. 176–77, 707, 731, 839, 858, 908).

Mr. Hertz' recommended rates (a lesser demand charge of $3.05 (T. 2012, 2397–99) suggest a still lesser demand charge of $2.75 under a proposed alternative to his recommendations for revised contract and billing demand and a greater commodity charge of 27.85¢) likewise are based upon a classification of respondent's costs between demand and commodity (Exh. 20).

This classification sponsored by Staff witnesses Craig (T. 1723–27) and Chin (T. 1732–41), rests upon the application of a 50–50 allocation formula developed in the *Atlantic Seaboard* case (11 FPC 43) to respondent's fixed costs, including fixed costs applicable to storage operations but excluding from transmission

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[24] Michigan Gas and the coal interests urge the adoption of a rate structure based upon a strict adherence to the Atlantic Seaboard formula, the former deviating therefrom only in its advocacy (brief p. 40) of 33.9¢, instead of the formula's 33.0¢ (T. 1750), for overrun gas. Neither presented any testimony; Michigan Gas offered certain evidence by reference which bears on the matter.

[25] North Central's brief, pp. 34–37, cites three examples of the alleged worsening of the plight of high load factor customers under the recommended rates and tariff provisions.

[26] The Ransom classification of said costs is supported also by Iowa Southern's witness Nissel (T. 742) and North Central's witness Spurrier (T. 888).

operations fixed costs relating to Laverne Field production facilities including a 40 mile 20-inch gathering line (T. 1727–28; 1902; 1945–49: also T. 1760, 1808, 1922–23, 1956) despite testimony to the effect that such costs of respondent's "gathering" facilities are of the same kind and perform the same functions as its mainline transmission costs (T. 644–46).

Before determining the issues of the effects of such probable improper classifications upon how much, if any, deviation from the *Atlantic Seaboard* formula is proper for Mich Wis' rates, there are two subsidiary issues to be disposed of.

The Staff's Proposed Equalization of Monthly Contract and Billing Demands

Staff witness Hertz recommends that as "a matter of principle" (T. 1977; 1980–81) Mich Wis' monthly contract demands and monthly billing demands be synchronized or equalized, by redefinition of monthly contract demands in Paragraph (2) of the ACQ–1 Rate Schedule (Ex. 22), and by making the billing demands follow the redefined contract demand.

The differences between monthly demands and billing demands as set forth in the currently effective tariff sheets of Mich Wis' Rate Schedule ACQ–1 (Third Revised Tariff Sheets Nos. 5 and 6) are as follows:

Months	Percent of maximum daily quantity	
	Contract demand	Billing demand
November, December, January, February	100	100
March 1 through March 15	85	75
March 16 through March 31 and the months of April, May, October	75	75
June, July, August, September	75	50

Mr. Hertz's Exhibit 22 and his testimony (T. 1752–56) provide for reducing the June–September monthly contract demands from 75 percent to 50 percent of MDQ [27] and for raising the March monthly billing demands from 75 percent to 80 percent of MDQ.

Under Docket No. RP60–9's rates the contract demands of overrun gas posed no problem since the commodity component of the ACQ–1 rate and the OS–1 overrun rate are both 26 cents (T. 1978–79, 1987). The redesigned rates recommended by Staff witness Hertz, however, are a commodity rate of 27.85 cents and an overrun rate of 30 cents. Witnesses presented by Madison (T. 2016–17, 2034–35; 2040–42; 2045–48) and by Wisconsin Fuel and Light Company (Exhs. 23–24; T. 2061–68; 2071; 2090; 2092–94; 2097) testified in opposition to Mr. Hertz's recommendation because of "problems imposed as to their summer sales." Mich Wis questions (Initial Brief, p. 39) the "need" for reducing its presently effective monthly contract demands, indicating (1) that its customers want the flexibility of supply and the economy of price presently afforded; and (2) that it is willing and able during the summer to supply them with more than 50 percent of their MDQ's under its ACQ tariff rather than under its OS tariff (Initial Brief, p. 40).

Mich Wis, however, states that if principle requires that these demands be equalized, it prefers Mr. Hertz's proposal for reducing its monthly contract demands to the alternative possibility (suggested by Michigan Commission) of increasing the monthly billing demands (Initial Brief, p. 40) together with a concomitant decreasing of the demand charge from Mr. Hertz's recommended $3.05 to $2.75 per Mcf "prospectively" (T. 2012, 2397–99).

[27] Gas delivered in excess of 50 percent would be billed as overrun.

Examination of the "Summary of Rate Schedules of Natural Gas Pipeline Companies Filed with the Commission" [28] indicates very clearly that Mich Wis occupies a unique position among long-line pipeline companies (probably owing to its very extensive underground gas storage facilities) in regard to contract and billing demand provisions.

Mr. Hertz is an acknowledged expert, and the Examiner has followed to a large extent his recommendations herein. Doubt, however, is entertained as to the necessity for equalization of Mich Wis' contract and billing demands, particularly in the light of (1) the absence of the citation of any precedent therefor (2) the opposition of the Wisconsin Commission and of Mich Wis' customers and (3) Mich Wis' expressions regarding its ability and willingness to accede to its customers' desires for flexibility of supply and economy of price by maintaining its present contract demands despite any complications or added costs that may result from any disparity between its redesigned commodity and overrun rates.

The Examiner, therefore, concludes that on the basis of the evidence herein Mr. Hertz has not established that Mich Wis should not be permitted to maintain its present monthly contract demands. (Viz. 100% of MDQ for November 1–February 28; 85% for March 1–16; and 75% for March 16–October 31).

Michigan Wisconsin's Alleged September 1, 1961, Rate Increase

Michigan Gas states (brief p. 14, *et seq.*) that "Michigan Wisconsin filed a $2,000,000 rate increase effective September 1, 1961, which it has failed to justify on this record." It urges (brief p. 20, *et seq.*) that the Staff's revised rates would authorize an increase in demand charges prospectively "without justification on the record." It also argues that resulting "increased revenues" would exceed those permitted by the stipulation.[29]

What Michigan Gas characterizes as a two million dollar demand rate increases is not an increase in the *demand rate*. It is an increase in the *annual demand charge*, resulting from increased *billing demand units*. The increased billing demand units result in part from a decrease in the limitation on *annual* contract quantity. This limitation is decreased from 185 to 190 times maximum *daily* quantity (MDQ) in computing a customer's *annual* contract quantity (ACQ) in Docket No. RP60–9. A customer's ACQ is thus increased without any increase in either his demand rate or his MDQ. His *annual demand charge* but not his rate increases as he becomes able to obtain his full MDQ on 190 days instead of 185 days during the contract year.

Beginning in 1959 with its authorized purchase from Midwestern Gas Transmission Company (Midwestern) of 158,000 Mcf per day of Canadian gas, Mich-Wis proposed to increase ACQ from 160 to 180 times MDQ. Opinion No. 331 (22 FPC 775) authorizing this increased gas purchase approved also the concomitant increased ACQ. The revised tariff sheets effectuating this increase of ACQ of October 7, 1960, subject to refund, were approved by Order issued July 7, 1960, which recited in pertinent part:

> First revised sheets 5, 10, 28 and 29 provide for an increase in the annual contract quantity limitation * * * up to 180 times maximum daily quantity * * * [These] Revised Sheets * * * *do not affect the level* of Michigan Wisconsin's rates. [Emphasis supplied.]

Opinion No. 336 (24 FPC 177) authorizing Mich Wis to further expand its capacity to the extent of 100,000 Mcf per day from the Laverne Field in Oklahoma noted (page 188) the proposal to increase ACQ from 180 to 185 times MDQ (also to increase billing demand during the four summer months from 40% to

[28] March 1962, 14th Ed., H. Zinder & Associates, Inc.
[29] *Cf.* Briefs of North Central (Initial p. 7 and Reply p. 10) to the same effect.

45% of MDQ) and these tariff revisions (as to billing demands) were effectuated (also as of October 7, 1960, subject to refund) by order issued in Docket No. RP60–9 on September 30, 1960.

Opinion No. 345 (June 28, 1961) authorized Mich Wis to purchase 75000 Mcf per day of additional gas from Northern Natural Gas Company (Northern Natural). In that case (Docket No. G–20572) Mich Wis proposed to again increase ACQ from 185 to 190 times MDQ (also to increase its delivery obligations and billing demands in the fall, spring, and summer months). In filing the revised tariff sheets and service agreements pursuant to such order, Mich Wis recited that "the proposed tariff changes result in no change in the level of Michigan Wisconsin's rates." By order issued August 31, 1961, these tariff changes were accepted effective September 1, 1961.[30] This order recited that the tariff sheets reflecting "an annual contract quantity equal to 190 days use of MDQ" (and) "an increase in contract demand" etc., were changes "contemplated by Opinion No. 345."

Staff witness Hertz testified that the proposed increased ACQ would be the proper ACQ "for the prospective period" (T. 2245).

Likewise untenable are Michigan Gas' and North Central's[31] arguments that the alleged increased rates (billing demand units) involved would cause Mich Wis' revenues to exceed the permissible limit of the proviso in paragraph (2) of the original stipulation (T. 22).[32]

Staff characterizes the whole allegation of a $2,000,000 unauthorized rate increase as "completely in error" (Answering Brief, p. 14) and Respondents assert that the excessive revenues argument is "patently absurd" (Respondents' Reply Brief p. 14). (See T. 1975–76; 2269–70; 2319–21; 2337–38; also 1565–69; 2241). The Examiner finds Michigan Gas' comparison of the 1961–62 revenues, including those generated by sales of the Northern Natural gas, with the stipulation's 1960 test year of service, which includes none of the costs relating to said gas, to be clearly an erroneous comparison.

Furthermore, North Central (Initial Brief p. 7) raises a jurisdictional question concerning the Staff's proposed commodity and overrun rates, as follows:

> * * * a serious legal question exists as to whether, under the limitations of Section 5 of the * * * Act, and the Commission's order remanding this matter to the Examiner, the Examiner may lawfully require Michigan Wisconsin to file ACQ–1[33] and OS–1 rates higher than those on file as of October 7, 1960.

The Staff (Answering Brief pp. 26–27) replies to North Central's above quoted assertion as follows:

> * * * Undoubtedly, the section of the Act upon which North Central rests is 'the Commission shall have no power to order any increase in any rate * * * unless such increase is in accordance with a new schedule filed by such natural gas company * * *'

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[30] With a tariff sheet reflecting the $3.50 demand and 26¢ commodity rate involved herein, in Docket No. RP60–9, being accepted subject to further order in said docket.

[31] Like Michigan Gas, North Central opposes the September 1, 1961 increase in monthly billing demands commensurate with the increase in monthly contract demands from 185 to 190 times MDQ urging, (Reply Brief p. 10) that unjustified increased rates resulted from the increased billing demands.

[32] Respondents' witness Lynch explained at length and in detail that the 185 days limitation applied to Docket No. RP60–9 billing demands up to September 1, 1961, with 190 days limitation effective thereafter (T. 1538; 1552–53).

[33] Staff's proposed commodity component is higher and its proposed demand component lower than those in the currently effective rate.

North Central apparently misconstrues that section (5(a)) of the Act, the Staff's rate design and the Staff's recommendations.

The Act refers to the rate, not to the components of the rate. In every rate proceeding since Seaboard, the Commission has examined the propriety of the level of the demand component and of the commodity component in a two-part rate. The Commission reports therefore are replete with decisions and orders in which the Commission assigned fewer dollars to the demand component of the rate than did the pipeline company. There can be no doubt but that the commodity component of the two-part rate is determined by determining the difference between the cost of service applicable to two-part rate and the demand dollars and dividing such differences by the volume of gas sold under the two-part rate. There is no doubt that under certain circumstances the resulting commodity level will be higher than the commodity component of the filed rate. This is not to be construed that the rate is an increase over the filed rate. Such a condition exists only when the whole rate applied to the volumes sold produces revenues in excess to the filed rate.

The rates recommended by Staff produce less revenues than the rates filed by Michigan Wisconsin * * *

There is a case in point. In *Interstate Power Co.* and *Northern Natural Gas* Co. v. *F.P.C.*, 236 F. 2d 372, it was contended that the said proviso of Section 5(a) deprived the Commission of power and jurisdiction to cause Northern Natural to charge a higher rate in any zone which it might set up than that currently shown in the schedules for the same area. In effect it was contended the Commission was limited by said proviso in establishing zones to causing any zone charge to be the same or less than the rate currently in effect for the area.

The Court held, however, that (page 377):

Undue discrimination or preference, as found to exist by reason of the present rate * * * may be eliminated in several ways, of which an increase in rates for certain service is only one. Section 5(a) specifically provides also that 'the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, or otherwise unlawful, or are not the lowest reasonable rates.' It would also be quite proper for the Commission upon the finding of undue discrimination or preference * * * to determine appropriate zones of service and require Northern to file appropriate rates which would not be unduly discriminating or preferential.

The Court further held that (page 378):

The Commission would not be violating the proviso of 5(a) by ordering Northern to reduce its existing rates in zone 2 and authorizing it to increase its existing rates in zone 3, through use of an approved differential, in order to balance its revenue.

And finally the Court held that (page 378):

and if the Commission, after hearing, determines the contract rate * * * to be so low as to conflict with the public interest, it may, under Section 5(a) authorize the natural gas company to file a schedule increasing the rate.

The Examiner concludes that the contentions of Michigan Gas and North Central in respect to an alleged September 1, 1961 unauthorized rate increase of 2 million dollars and to alleged 1961–62 revenue in excess of those permitted by the Original Stipulation, and those of North Central regarding Section 5(a) inhibiting the Commission's fixing of higher commodity and overrun rates are without merit and should be rejected.

The Atlantic Seaboard Formula

Staff witness Hertz grounded his recommended rates on a classification of Michigan-Wisconsin's costs in accordance with the *Atlantic Seaboard* case (11 FPC 43). Discussing them and the filed rates (demand $3.50; commodity 26¢) in terms of their "tilt" from rates determined by the application of the so-called Atlantic Seaboard formula (T. 1750) Mr. Hertz states:

> * * * Michigan Wisconsin's present rates reflect a 'tilt' of about 30% to demand and I believe that to reduce this 'tilt' to zero in one step would be too drastic a change. The rate levels set out in the Supplemental Stipulation and Agreement dated November 8, 1961, and the Second Supplemental Stipulation and Agreement dated December 1, 1961 reduce this tilt to about 12%, and I believe that such rate levels would be more reasonable at this time. I therefore recommend that Michigan Wisconsin's Rate Schedule ACQ–1 contain a demand component of $3.05 per Mcf and a commodity component of 27.85¢ per Mcf with a development rate of 45¢ per Mcf.

Mr. Hertz defines the term "tilt" (T. 2221) as follows:

> A tilt, a rate tilt, is a term used to describe a rate which recovers more either in the demand component than the costs classified to demand, or which results in commodity revenues which exceed the costs classified to commodity. And in this instance it is a tilt to demand.

The important word "classified" in his definition refers to a classification of Michigan-Wisconsin's costs to demand and commodity in accordance with the Atlantic Seaboard formula.[34] When applied to Michigan Wisconsin's costs, said formula produces a demand charge of $2.65 (T. 1750). Hence, the $3.50 filed demand rate has a 32.1% tilt" to demand ($3.50−$2.65=$.85÷$2.65=32.1%) and the $3.05 recommended demand rate has only a 15.1% "tilt" to demand ($3.05–$2.65=$0.40÷$2.65=15.1%).

Such percentages of "tilt" measure only an excess collection in the demand and a deficit collection in the commodity components of the filed and recommended rates, respectively, in terms of a classification of Michigan Wisconsin's costs resulting from application thereto of the said formula. It should be noted that these "tilt" percentages refer to a computed deviation from said formula at zero load factor; they reflect neither a customer's average load factor[35] nor his net average costs per Mcf of gas which are a composite of his demand and commodity charges.

Comparison of a customer's net average costs of gas for a given period of time at a given load factor under the filed rates ("tilted" 32% to demand according to Mr. Hertz' definition) with such costs computed under the "untilted" formula rates for the same period and load factor results in a considerably lesser percentage than 32%.[36]

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[34] The formula provides for a 50–50 division between demand and commodity of certain fixed costs. Since the $1,367,795 of "revenues from interruptibles" that is deducted (p. 58) from "total commodity costs" (11 FPC 43, 58, 71) appears to contain some demand costs, the Atlantic Seaboard formula yardstick itself probably is "tilted" to demand.

[35] The average rate paid by a customer decreases as his load factor increases until the effect of "tilt" disappears at system load factor.

[36] For example, using an average contract demand equal to 75% of the MDQ and ten days use of MDQ a customer's average charge under a composite of the filed rates ($3.50 demand and 26¢ commodity) is 52.25¢ per Mcf as compared with 49.55¢ per Mcf under a composite of the "Atlantic Seaboard" rates ($2.65 demand and 29.67¢ commodity). The difference between the two average charges is 2.7¢ per Mcf, or 27¢ for the 10 Mcf purchased, and the 27¢ collected under the filed (32.1% tilted) rates in excess of that which would have been collected under "untilted" rates based on the "Atlantic Seaboard" formula amounts to 13.6% (not 32.1%) of the demand charge of $2.65 times 75% or $1.9875 in the untilted rate.

Thus while Mr. Hertz' respective percentages of "tilt" in the filed and recommended rates are unquestioned, they are much less meaningful than the percentage by which a customer's average net costs under the filed rates exceeds his average net costs under the recommended rates when it comes to determining whether the filed rates or the recommended rates should be adopted herein as the proper rates for the future.[37]

Mr. Hertz' (T. 2219) expressed the opinion that the "Atlantic Seaboard" formula is to be applied to all long-line pipelines including Michigan Wisconsin. Of course, "mitigating circumstances" (T. 2219–20)[38] are taken into consideration in deviating therefrom in any respect, *i.e.*, in recommending rates having any "tilt."

The customer interveners point out a number of "mitigating circumstances" including the dissimilarities in the pipelines resulting from Michigan Wisconsin's extensive storage facilities and the comparative lack thereof on the Atlantic Seaboard line. They urge quite logically (but contrary to Exhibit 20 and Staff witnesses Craig and Chin) that costs of storage should be classified 100% to demand as related to meeting the peak period contract demands. They also quite logically urge that Michigan Wisconsin's Laverne field production and gathering facilities should not be classified 100% to commodity.

The theory underlying the 50–50 classification (50% demand and 50% commodity) in Atlantic Seaboard is that off-peak sales should bear a fair share of the fixed costs of the pipeline's transmission capacity, the Commission stating (11 FPC 43 at 55) "pipelines are built to supply service not only on the few peak days but on all days throughout the year."[39]

During the summer months about 50% of Michigan Wisconsin's transmission capacity is not available for customer service because it is being utilized to deliver gas into storage for subsequent withdrawal as necessary to meet winter's higher contract demands (T. 1919–20). With only about 50% of its transmission capacity available in the summer months to service its firm demand customers—some of which serve some off-peak customers—Michigan Wisconsin appears to have very little opportunity (T. 619–20, 637, 1342) to emulate non-storage long-lines which normally make large sales to off-peak customers (directly or through utility customers) during the summer months.

Like the cost of a propane supply for peak days (*cf.* T. 1417) the cost of storage properly should be classified 100% to demand (*United Fuel Co.*, 12 FPC 275); "storage is about as close to . . . demand costs as you can get" (T. 1342). Michigan Wisconsin's storage adds nothing to its *annual* sales capacity, and hence it appears that Staff Exhibit 20 improperly attributes 50% of Michigan Wisconsin's costs of storage to annual sales since the same (equal) percentage is attributed to its transmission costs which latter costs directly provide and limit its annual sales capacity. Exhibit 20 likewise improperly classifies as 100% commodity Michigan Wisconsin's Laverne Field production costs for additional gas (19 FPC 989 and 22 FPC 577) which costs include a 40 mile 20-inch "gathering" line and appurtenant facilities in said field. (*cf.* T. 644–46, 1728, 1760, 1808, 1922–23, 1946–47, 1956; Item K, pp. 97, 104; and Item LL, sht. 1; (*cf.* T. 1352)).

[37] *Viz.* 6.6% using 75% of contract demand and 10 days use of MDQ as in the example cited in the previous note, or about ½ of the 13.6% difference therein shown between the average charges under the rates and the Atlantic Seaboard rates.

[38] Only Michigan Gas and the coal interests advocate the adoption of the Atlantic Seaboard formula rates.

[39] In *Panhandle Eastern Pipe Line Co.*, 13 FPC 53 at 107, the Commission noted that unless the 50–50 classification was maintained therein, off-peak customers might receive service for almost the full year without paying any of the fixed costs.

Granting that the above cited items constitute departures from a "Seaboard" classification, the question remains whether such departures invalidate Exhibit 20's classification of Michigan Wisconsin's costs or merely constitute additional "mitigating circumstances" substantiating Mr. Hertz' judgment in departing from the Atlantic Seaboard formula to recommend rates "tilted" to demand.[40]

As the first step in answering the above stated question, the Examiner includes in the appendix hereto an exhibit (Ex. B) showing the effects of a reallocation of these costs in Exhibit 20 along lines deemed proper. Using Table 4 in the Staff Brief and making adjustments to Exhibit 20 by classifying storage costs 100% to demand (instead of 50–50) and Laverne Field production costs 50–50 instead of 100% to commodity results in a deduction of $3,361,961 from the total amount shown for commodity in said Table 4; and from this new total is calculated a unit price of 28.57¢ for commodity, in lieu of the 27.85¢ recommended by Mr. Hertz and the Staff.

Since the decision to be made herein lies between the filed rates in which the commodity component is 26¢ and the Staff's recommended rates in which the commodity component is 27.85¢, this adjustment to Exhibit 20 gives added suport to Mr. Hertz' judgment in proposing an increase in Michigan Wisconsin's presently effective 26¢ commodity component.

As indicated hereinabove, Michigan Wisconsin's customers, particularly three Iowa distributors, testified that they prefer the 26¢ commodity (and overrun) rate to the higher commodity and overrun rates proposed by the Staff (27.85¢ and 30.0¢). During the hearings, however, it developed that the average cost of gas to Iowa Southern (one of the chief objectors to the supplemental stipulations rates which also are those recommended by the Staff herein) was less under the Seaboard formula's [41] higher commodity component than under that of the filed rates (*viz.*, 44.73¢ as against 45.77¢—T. 1698–1700).

As shown in the discussion of "tilt," more meaningful comparisons result when they involve average net costs of gas. To show that such is true in appraising the competitive situation of the Iowa customers under the filed rates ($3.50 demand, 26¢ commodity), the recommended rates ($3.05 demand, 27.85¢ commodity), Northern Natural's zone 3 rates ($3.944 demand, 22.9¢ commodity), Northern Natural's zone 2 rates ($3.624 demand, 22.4¢ commodity), and Natural Gas Pipeline zone 1 rates ($2.90 demand, 20.0¢ commodity), the Staff included Graph No. 1 on page 13 of its Answering Brief. Because the recently approved settlement of the Northern Natural rate case changed the zone 3 rates to $3.692 demand, 23.9¢ commodity and the zone 2 rates to $3.372 demand, 23.4¢ commodity, a revised Graph No. 1 appears as Exhibit C in the Appendix hereto. The revisions do not lessen the impact of the Graph's illustration of the competitiveness of the Staff's recommended rates ($3.05 demand, 27.85¢ commodity) insofar as Michigan Wisconsin's Iowa customers are concerned.

As hereinabove stated, Michigan Wisconsin and its customers, with the exception of Michigan Gas and the Iowa distributors, accepted the Staff's recommended rates as set out in the Supplemental Stipulations. Michigan Wisconsin therein agreed to make the refunds required by substitution of said rates for its filed rates. After careful consideration, and pursuant to an unopposed motion, the Examiner, on December 11, 1961, certified to the Commission the settlement proposed in the Supplemental stipulations with a finding that said settlement was reasonable and with his recommendation that it be accepted in the

[40] While his recommended rates are "tilted" in lesser degree than the filed rates, they, too, deviate from the Atlantic Seaboard formula.

[41] The Seaboard Formula's commodity component is higher than Staff's recommended commodity component. The average cost of gas under the recommended rates also is less than under the filed rates, computing to 45.08¢.

light of its almost unanimous acceptability to Michigan Wisconsin and its customers. The Commission's order of January 12, 1962, recited only the lack of unanimity for its failure to accept such settlement and its consequent remand of the case to the Examiner for determination in due course.

The Lowest Reasonable Rates

Bearing in mind the Commission's duty to "order a decrease where existing rates are not the lowest reasonable rates" (Section 5(a) Act and *Interstate Power Co.* v. *F.P.C.*, 236 F. 2d 372 at 377) the Examiner finds that the Staff's recommended rates are the *lowest* reasonable rates for Mich Wis for the future in Docket No. RP60–9.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the record and the briefs filed in these proceedings, it is found and concluded, in addition to the findings and conclusions heretofore stated, that:

(1) American Louisiana Pipe Line Company and Michigan Wisconsin Pipe Line Company are separately and severally engaged in the transportation and sale of natural gas in interstate commerce for resale, and each of them is or are natural gas companies under the Natural Gas Act; and the rates and charges of these natural gas companies involved herein are subject to the jurisdiction of the Federal Power Commission.

(2) The increased rates and charges of American Louisiana Pipe Line Company contained in its FPC Gas Tariff, First Revised Volume No. 1 which were made effective as of November 1, 1959, by Commission order of December 1, 1959, in Docket No. G–18419 are excessive, and therefore, such increased rates and charges are unjust, unreasonable and unlawful.

(3) The amounts by which the rates and charges found in Finding (2) to be unlawful exceed the rates and charges hereinafter determined to be just and reasonable should be refunded by American Louisiana to its utility customers together with interest thereon at 6% per annum.

(4) For the purposes of Finding (3) American Louisiana Pipe Line Company shall refund to its customers for service rendered during the period November 1, 1959 to December 31, 1960, inclusive the amounts determined upon the basis of the provisions set forth in Paragraphs 3, and 4 of the Stipulation and Agreement (See Appendix Exhibit A herein) as modified and approved by the Commission Order of October 20, 1961, together with interest at 6% per annum; and for service rendered during the period from January 1, 1961 to the effective date of the rates herein ordered, the difference between the revenues collected under the filed rates and the revenues which would have been collected under the rates set forth in Section 5 of the Stipulation and Agreement as modified, together with interest at 6% per annum.

(5) Just and Reasonable rates and charges for the service to which American Louisiana's Rate Schedules CD–1 and SG–1 are applicable, from the effective date herein ordered, are:

Rate Schedule CD–1:

$2.325 per month per Mcf of Contract Demand
30.1¢ per Mcf of gas delivered
7.64¢ per Mcf Demand Charge for Impaired Delivery
Alternative rate during development period:
43.0¢ per Mcf for all gas delivered

Rate Schedule SG–1:

45¢ per Mcf for all gas delivered.

(6) The increased rates and charges of Michigan Wisconsin Pipe Line Company contained in its: (a) Fifth Revised Sheet No. 5 of its FPC Gas Tariff, Original Volume No. 1, which were made effective as of September 15, 1957 by Commission Order issued November 8, 1957, in Docket No. G–12292; (b) FPC Gas Tariff, Second Revised Volume No. 1, which were made effective as of March 1, 1960 by Commission Order issued March 18, 1960 in Docket No. G–17512; and (c) First Revised Sheets Nos. 7, 9 and 11, and Second Revised Sheets Nos. 6 and 9 which were made effective as of October 7, 1960 upon proper motion of Michigan Wisconsin; are excessive, and therefore such increased rates and charges are unjust, unreasonable and unlawful.

(7) The amounts by which the rates and charges found to be unlawful in Finding (6) exceed the rates and charges hereinafter determined to be just and reasonable for the service in such schedules described should be refunded with interest by Michigan Wisconsin to its utility customers.

(8) For the purposes of Finding (7) Michigan Wisconsin Pipe Line Company shall refund to its customers for service rendered during the period September 15, 1957 to October 6, 1960, inclusive, the amount set forth in Paragraph 1 of the Stipulation and Agreement, as modified, together with interest at 6% per annum and

(9) For service rendered during the period from October 7, 1960 to the effective date of the rates herein ordered, the difference between the revenues collected under the filed rates and the revenues which would have been collected under the just and reasonable rates set forth in Finding (10) herein, the procedure for effectuating such refund being set forth in Section 2 of the Stipulation and Agreement, as amended. Interest on such refunds shall be at 7% per annum.

(10) Just and reasonable rates and charges for the service to which Michigan Wisconsin's Rate Schedules ACQ–1, SGS–1 and OS–1 are applicable, from the effective date herein ordered, are:

Rate Schedule ACQ–1:

$3.05 per month per Mcf of Billing Demand
27.85¢ per Mcf of gas delivered
13.75¢ per Mcf of released gas purchased
10.00¢ per Mcf Demand Charge Adjustment for Impaired Delivery
Alternative rate during development period:
45.00¢ per Mcf of gas delivered

Rate Schedule SGS–1:

For customers whose Maximum Daily Quantity does not exceed 6000 Mcf
45.00¢ per Mcf for all gas delivered
10.00¢ per Mcf Demand Charge Adjustment for Impaired Delivery

Rate Schedule OS–1:

30.00¢ per Mcf for all gas delivered

ORDER

Wherefore, it is ordered, subject to review by the Commission on appeal, or review by the Commission on its own motion, as provided in its Rules of Practice and Procedure, that:

(A) The increased rates and charges of American Louisiana Pipe Line Company embodied in Finding (2) be and the same are disallowed; and the tariff sheets incorporating such rates and charges be and the same are cancelled.

(B) Within 30 days from the date of issuance of this order, American Louisiana shall file revised tariff sheets to its FPC Gas Tariff, First Revised Volume No. 1 consistent with this decision and order reflecting the rates and charges in Finding (5).

(C) Upon approval by the Commission of the rates filed by American Louisiana Pipe Line Company pursuant to ordering paragraph (B) above, the approved rates shall immediately become the legally effective rates to be observed and in force unless and until changed by a subsequent order of the Commission.

(D) Within 60 days from the date of issuance of this order American Louisiana shall refund to each of its interstate wholesale customers entitled thereto the amount of refund and interest due determined upon the basis of the provisions of Finding (4).

(E) The increased rates and charges of Michigan Wisconsin Pipe Line Company embodied in Finding (6) be and the same are disallowed; and the tariff sheets incorporating such rates and charges be and the same are cancelled.

(F) Within 30 days from the date of issuance of this order, Michigan Wisconsin shall file revised tariff sheets to its FPC Gas Tariff, Second Revised Volume No. 1 consistent with this decision and order reflecting the rates and charges in Finding (10).

(G) Upon approval by the Commission of the rates filed by Michigan Wisconsin pursuant to ordering paragraph (F) above, the approved rates shall immediately become the legally effective rates to be observed and in force unless and until changed by a subsequent order of the Commission.

(H) Within 60 days from the date of issuance of this order Michigan Wisconsin shall refund to each of its interstate wholesale customers the amount of refund and interest due determined on the basis of the provisions of Findings (8) and (9).

(I) On or before 75 days from the date of the issuance of this order American Louisiana Pipe Line Company and Michigan Wisconsin Pipe Line Company, shall, report to the Commission in writing and under oath, the details of its calculations resulting in the refunds ordered with respect to American Louisiana pursuant to paragraph (D) hereof and with respect to Michigan Wisconsin pursuant to paragraph (H) hereof, together with copies of releases from their customers with respect to such refunds.

(J) If American Louisiana in the future receives any refunds from gas suppliers applicable to the period subsequent to November 1, 1959, as the result of any final order of the Commission then American Louisiana shall make further refund to its customers of such refunds in a manner satisfactory to the Commission. Any such refund shall be made within thirty days following the date of the issuance of an order of the Commission approving the proposed plan for distribution of the refunds American Louisiana shall have received but American Louisiana shall not be required to make such refunds until the total amount of refund received from suppliers exceeds $165,000.

(K) If any of American Louisiana's gas suppliers are required by any order of the Commission to make reductions in rates to be charged or collected for natural gas sold to American Louisiana below the rates used in computing the cost of service shown in Schedule AL–1 of the Stipulation and Agreement (Appendix Exhibit A), then American Louisiana shall file with the Commission tariff sheets, acceptable to the Commission, which shall reflect the effect of such gas suppliers' decreased rates and charges such filing to be made within sixty days after the date of the order reducing such suppliers' rates, provided that, and when, the total reduction in charges shall aggregate $165,000 per annum.

(L) If Michigan Wisconsin in the future receives any refunds from gas suppliers applicable to the period subsequent to September 15, 1957, as the result of any final order of the Commission, then Michigan Wisconsin shall make further refund to its customers of such refunds in a manner satisfactory to the Commission. Any such refund shall be made within thirty days follow-

ing the date of the issuance of an order of the Commission approving the proposed plan for distribution of the refunds to Michigan Wisconsin shall have received but Michigan Wisconsin shall not be required to make such refunds until the total amount of refund received from suppliers shall aggregate $265,000.

(M) If any of Michigan Wisconsin's gas suppliers are required by any order of the Commission to make any reductions in rates to be charged or collected for natural gas sold to Michigan Wisconsin below the rates used in computing the cost of service shown in Schedule MW–II of the Stipulation and Agreement (Appendix Exhibit A), then Michigan Wisconsin shall file with the Commission tariff sheets, acceptable to the Commission, which shall reflect the effect of such gas suppliers' decreased rates and charges such filing to be made within sixty days after the date of the order reducing such suppliers' rates, provided that, and when, the total reduction in charges shall aggregate $265,000 per annum.

(N) The proceedings in Docket No. G–18419, American Louisiana Pipe Line Company, and the proceedings in Dockets Nos. G–12292, G–17512 and RP60–9, Michigan Wisconsin Pipe Line Company, be and the same are hereby terminated, subject to the compliance by each of those respondents with the terms and conditions hereof.

(O) The termination of the proceedings in Docket No. G–18419, American Louisiana Pipe Line Company, and the proceedings in Docket Nos. G–12292, G–17512 and RP60–9, Michigan Wisconsin Pipe Line Company as hereinbefore provided in this order, is without prejudice to any findings or orders which have been or may hereafter be made by the Commission.

ROBERT E. FREER,
Presiding Examiner.

MICHIGAN WISCONSIN PIPE LINE COMPANY (DOCKET NOS. G–12292 AND G–17512)

Schedule MW–I

Staff cost of service (based on June 20, 1961 conference)—36 months ended Aug. 31, 1960

Line No.	Particulars	Total	Year ended Aug. 31, 1958	Year ended Aug. 31, 1959	Year ended Aug. 31, 1960
	(1)	(2)	(3)	(4)	(5)
1	Operating expenses	$123,819,185	$36,929,948	$42,034,234	$44,855,003
2	Depreciation	16,543,262	4,854,005	5,264,818	6,404,439
	Taxes:				
3	Other than income	5,509,298	1,559,774	1,726,706	2,222,818
4	Federal income (page 975)	13,685,236	3,998,483	4,429,965	5,256,788
5	State income	402,153	122,071	125,015	155,067
6	Return at 6.5% (page 975)	23,807,924	7,099,763	7,583,258	9,124,903
7	Other income	(72,950)	(25,354)	(23,461)	(24,135)
8	Cost of service	183,694,108	54,538,690	61,160,535	67,994,883
9	Gas sales revenues	183,741,699	54,537,963	61,490,569	67,713,167
10	Excess revenues (deficiency)	47,591	(727)	330,034	(281,716)
11	Sales volume in Mcf	491,403,348	145,530,272	163,974,848	181,898,228
	NOTE.—Increase in costs of service due to not using depreciation on transmission rights-of-way as a deduction to calculate Federal income tax		65,439	70,385	85,021

Return and Federal income tax—36 months ended Aug. 31, 1960

Line No.	Particulars (1)	Year ended Aug. 31, 1958 (2)	Aug. 31, 1959 (3)	Aug. 31, 1960 (4)
1	Rate base	$111,180,485	$118,458,631	$141,677,546
2	Return @ 6.5%	7,226,732	7,699,811	9,209,040
3	Deductions	2,967,710	3,075,601	4,001,920
4	Less: Depreciation on transmission rights-of-way	(74,292)	(78,173)	(90,000)
5	Net deductions	2,893,418	2,997,428	3,911,920
6	Tax base, unadjusted	4,333,314	4,702,383	5,297,120
7	Working capital adjustment	(126,969)	(116,553)	(84,137)
8	Net tax base	4,206,345	4,585,830	5,212,983
	Federal income tax:			
9	Rate of 48.7333%	3,998,483		
10	49.1356		4,429,965	
11	50.2092			5,256,788
12	Deferred taxes	742,877	1,169,729	2,667,950
13	Currently payable	3,255,606	3,260,236	2,588,838

MICHIGAN WISCONSIN PIPE LINE COMPANY (DOCKET NO. RP60-9)

Schedule MW-II

Staff cost of service (based on June 20, 1961 conference)—base year ended Aug. 31, 1960, normalized for known changes

Line No.	Particulars (1)	Amount (2)
1	Operating expenses	$77,745,954
2	Depreciation	9,129,790
	Taxes:	
3	Other than income	3,321,416
4	Federal income (page 976)	7,915,311
5	State income (page 976)	237,459
6	Return at 6.5% (page 976)	13,850,260
7	Other income	(24,135)
8	Cost of service	112,176,045
9	Sales in MMcf (page 976)	268,000
10	Cost of service per Mcf (cents)	41.86

Return and income taxes—Base year ended Aug. 31, 1960, normalized for known changes

Line No.	Particulars (1)	Amount (2)
1	Rate base	$214,824,344
2	Return @ 6.5%	13,963,582
3	Deductions	6,245,352
4	Tax base, unadjusted	7,718,230
5	Working capital adjustment	(113,322)
6	Net tax base	7,604,908
7	Federal income tax @ 51%	7,915,311
8	Deferred taxes	4,428,465
9	Currently payable	3,486,846
10	State income taxes (3% of Federal)	237,459

Gas balance—Base year ended Aug. 31, 1960, normalized for known changes

Line No.	Particulars (1)	MMcf at 14.73 psia (2)
	Gas supply:	
1	American Louisiana	37,955
2	Other	245,812
3	Total	283,767
4	Company use	14,256
5	Losses	1,511
6	Sales	268,000
7	Total	283,767

AMERICAN LOUISIANA PIPE LINE COMPANY (DOCKET NO. G–18419)

Schedule AL–I

Staff cost of service (based on June 20, 1961 conference)—Year 1960—Unadjusted

Line No.	Particulars (1)	Amount (2)
1	Operating expenses	$39,624,387
2	Depreciation	4,852,255
	Taxes:	
3	Other than income	3,580,739
4	Federal income (page 977)	3,916,084
5	State income	136,204
6	Return at 6% (page 977)	7,306,030
7	Other income	(13,898)
8	Cost of service	59,401,801
9	Sales volumes—Mcf at 14.73 psia	163,783,315
10	Cost of service per Mcf (cents)	36.27
11	Cost of service per Mcf using depreciation on transmission rights-of-way as a deduction to calculate Federal income tax (cents)	36.23
NOTE.—Increase in cost of service due to not using depreciation on transmission rights-of-way as a deduction to calculate Federal income tax		64,471

Federal income tax (based on June 20, 1961 conference)—Year 1960—Unadjusted

Line No.	Particulars (1)	Amount (2)
1	Rate base	$121,767,162
2	Return at 6%	7,306,030
3	Deductions	3,521,933
4	Less: Tax depreciation on transmission rights-of-way	(63,341)
5	Net deductions	3,458,592
6	Tax base	3,847,438
7	Federal income tax at rate of 50.4421%	3,916,084

AMERICAN LOUISIANA PIPE LINE COMPANY (DOCKET NO. G-18419)

Schedule AL-II

Staff cost of service (based on June 20, 1961 conference)—Base year ended Dec. 31, 1960, normalized for known changes

Line No.	Particulars (1)	Amount (2)
	Operating expenses:	
1	Cost of gas (page 979)	$31,309,504
2	Other	4,914,553
3	Total	36,224,057
4	Depreciation	4,967,224
	Taxes:	
5	Louisiana gas severance	2,009,461
6	Federal income (page 978)	4,013,297
7	State income	136,204
8	Other	1,790,912
9	Return at 6% (page 978)	7,134,010
10	Other income	(13,898)
11	Cost of service	56,261,267
12	Sales volumes—MMcf at 14.73 psia (page 978)	150,178
13	Cost of service per Mcf (cents)	37.46
NOTE.—Increase in cost of service due to not using depreciation on transmission rights-of-way as a deduction to calculate Federal income tax		64,216

Federal income tax (based on June 20, 1961 conference)—Base year ended Dec. 31, 1960, normalized for known changes

Line No.	Particulars (1)	Amount (2)
1	Rate base	$119,445,345
2	Return at 6%	7,166,721
3	Deductions	3,343,689
4	Less: Tax depreciation on transmission rights-of-way	(65,592)
5	Net deductions	3,278,097
6	Tax base, unadjusted	3,888,624
7	Working capital adjustment	(32,711)
8	Net tax base	3,855,913
9	Federal income tax at rate of 51%	4,013,297
10	Deferred Federal income tax	2,922,918
11	Currently payable	1,090,379

Gas balance (based on June 20, 1961 conference)—Base year ended Dec. 31, 1960, normalized for known changes

Line No.	Particulars (1)	MMcf at 14.73 psia (2)
	Gas Supply (page 979):	
1	Second Bayou Field	2,731
2	Other	155,327
3	Allowance for operating variations	(3,100)
4	Total	154,958
5	Company use	3,819
6	Losses	961
7	Sales	150,178
8	Total	154,958

Cost of gas purchased (based on June 20, 1961 conference)—Base year ended Dec. 31, 1960, normalized for known changes

Line No.	Particulars	Annual volume MMcf at 14.73 psia	Unit price	Amount
	(1)	(2)	(3)	(4)
			Cents	
1	Louisiana supplies (Conference Schedule B, page 4)	138,202	19.04	$26,313,042
2	Additional volumes required for annual sales of 150,178 MMcf	1,241	17.65	219,037
3	Total Louisiana (see note)	139,443	19.03	26,532,079
4	Texas Gas Transmission Corp.	18,615	29.03	5,403,935
5	Total	158,058	20.21	31,936,014
6	Allowance for operating variations	3,100	20.21	626,510
7	Normal year purchases	154,958	20.21	31,309,504

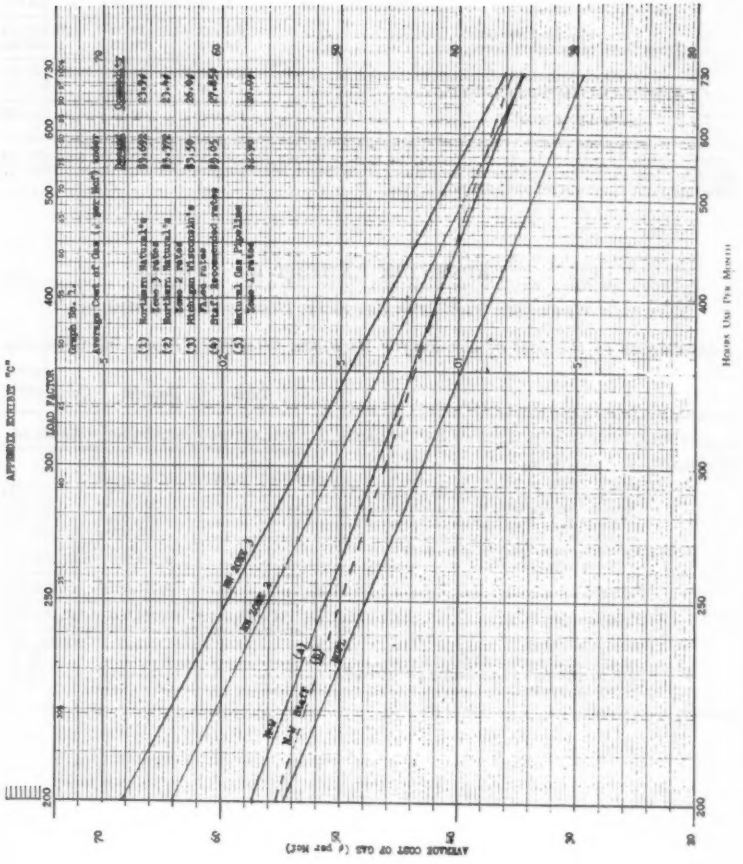
NOTE.—Reserve redeterminations which result in a reduction of 3,589 MMcf available annually to American Louisiana from the Chenier Perdue and Holly Beach fields commencing June 1, and Nov. 1, 1961, respectively, are not reflected above.

APPENDIX EXHIBIT B

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. G–18419, *et al.*

Adjustments to the cost of service for Michigan Wisconsin Pipe Line Company

	Total	Demand	Commodity
A. Staff Brief, Table No. 4, p. 21 "Allowable" Revenues	$111,834,014	$31,901,248	$79,932,766
B. Adjustments to Exhibit 20:			
I. Production costs:			
Administrative and General Expenses—p.2, L. 5		53,574	(53,574)
Depreciation—p. 2, L. 10		250,456	(250,456)
Taxes—p. 2, L. 15		363,524	(363,524)
Return—p. 2, L. 16		405,051	(405,051)
II. Storage costs:			
Total cost—p. 2, L. 18		2,289,356	(2,289,356)
Subtotal		3,361,961	(3,361,961)
Total as adjusted	111,834,014	35,263,209	16,570,805
Total sales (Mcf)			268,000,000
Adjusted unit commodity cost (cents)			28.57
Staff recommended commodity rate (cents)			27.85
Difference (cents)			0.72


APPENDIX EXHIBIT "C"
LOAD FACTOR
AVERAGE COST OF GAS (¢ per Mcf)
Hours Use Per Month
Average Cost of Gas (¢ per Mcf) under
Demand
Commodity
(1) Northern Natural's Zone 3 rates
(2) Northern Natural's Zone 2 rates
(3) Michigan Wisconsin's Filed rates
(4) Staff Recommended rates
(5) Natural Gas Pipeline Zone 1 rates
NN ZONE 3
NN ZONE 2
N-W
N-W Staff
(A)
(B)
NGPL

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

AREA RATE PROCEEDING, ET AL., DOCKET NO. AR61-2, ET AL.

ORDER ADDING RESPONDENTS, PRESCRIBING HEARING PROCEDURES AND SETTING HEARING DATES

(Issued May 16, 1963)*

These proceedings were instituted by our order of May 10, 1961, to determine the just and reasonable rate or rates for sales subject to our jurisdiction of natural gas produced in the Southern Louisiana area, defined as that portion of the State of Louisiana lying south of the 31° parallel and including all areas, both State and Federal, in the Gulf of Mexico off the shore of Louisiana.[1] In the order, prehearing conferences were scheduled and such conferences were subsequently convened in accordance with the Commission's Rules of Practice and Procedure. Thereafter the Commission issued orders requiring the Respondents to submit cost and operating data on Appendices "A," "B" and "C" questionnaire forms which were provided. The data submitted by the Respondents are being summarized and composited by the Commission's staff to the extent possible. The basic data, as well as a rate schedule analysis made by the staff, are to be incorporated in exhibits which we shall require be distributed on or before June 10, 1963, to the parties in the proceeding entitled to receive documents in accordance with our order of May 10, 1961.

The Commission has determined to proceed at this time and fix a series of hearing dates in these proceedings, the first of which is set for December 3, 1963. The setting of hearing dates this far in advance, coupled with the procedures which are being prescribed in this order will do much to achieve the objective of expediting the hearing and ultimate decision herein. Since such an end is clearly in the public interest, the cooperation of all parties and their attorneys is required for the realization of this objective.

In other proceedings before the Commission, the distribution of testimony and exhibits in advance of cross-examination has proven of great value in expediting the hearing. Accordingly, we are requiring the staff and all other parties, including Respondents and interveners herein, to introduce into the record their direct testimony and exhibits, as well as any rebuttal testimony and exhibits to such direct presentations at hearings for that purpose set in advance of the hearing at which cross-examination thereon will proceed. All such testimony must be in written form to be incorporated into the record. At the hearing set for December 3, 1963, the direct presentations of the staff and all parties who desire to make evidentiary presentations, will be required to be introduced into the record although the witnesses themselves will not be called upon to appear at that hearing to adopt their testimony.

On the dates prescribed for the introduction of the various presentations into the record, the parties desiring to make such presentations and Commission staff counsel shall appear at the hearing and shall file with the presiding examiner copies of their prepared testimony and of their exhibits of a documentary character, and at the same time shall distribute copies of the exhibits to parties

[1] By orders issued December 31, 1962, January 22 and February 7, 1963, certificate proceedings therefore consolidated with these proceedings were severed therefrom and consolidated with the proceedings in *Union Texas Petroleum, A Division of Allied Chemical Corporation (formerly Union Oil and Gas Corporation of Louisiana)*, *et al.*, Docket No. G-13221, *et al.*, wherein the Commission will determine the initial prices which are required by the public convenience and necessity.

*Order denying motions to revise hearing procedure, issued August 20, 1963, 30 FPC 512. Petition for Review dismissed on October 17, 1963, in *Sun Oil Co.* v. *F.P.C.* (CA5 No. 20868).

appearing at the hearing and entitled to the same. This procedure is intended to eliminate the requirement that the testimony and exhibits be distributed by mail. Accordingly, parties desiring to receive copies of exhibits shall arrange for either their counsel or an authorized representative to be present at the hearing set for December 3, 1963, and February 18, 1964.

The testimony and exhibits which the parties offer as their direct presentations will cover all phases of such presentations, including cost, economic or any other type of evidence. The scheduling here provided will afford all parties a six-month period to prepare any presentation based upon the basic data exhibits which the staff will distribute by June 10. With respect to any other presentation which the parties may wish to make which is not based on such data, these presentations must likewise be prepared for introduction on December 3. It is considered that the scheduling that is here being established for the introduction of these presentations will provide ample time for all parties to prepare their presentations, particularly in view of the fact that the proceedings were instituted almost two years ago and the Respondents and interveners have been continuously alerted to the need to prepare for the hearings herein. In view thereof, the parties are advised that applications for any extensions of time will not be looked upon with favor.

Following the hearing at which the direct cases of all parties wishing to make such a presentation will be introduced into the record, the staff and all parties will be afforded a 2½-month period to prepare rebuttal testimony and exhibits, if they desire to do so. These rebuttal presentations will be introduced into the record at a hearing set for February 18, 1964. These presentations, in the absence of good cause shown, are to be strictly confined to rebutting matters developed in the direct presentations and any new matter which is sought to be introduced in the guise of rebuttal will be subject to a motion to strike. The hearing examiner will fix a time schedule in advance of the hearing set for cross-examination for the making of motions, which will permit such motions to be ruled on expeditiously.

After the introduction of rebuttal testimony and exhibits into the record, the parties will have one month to prepare for the hearing which is being set for March 17, 1964. At that hearing the presiding examiner will take the necessary steps to insure that the hearing proceeds with dispatch. At the hearing witnesses will first adopt their written testimony, make such corrections as are necessary and then will be subjected to cross-examination. The parties should be prepared to proceed with the cross-examination, according to a schedule fixed by the examiner, without substanatial break.

At the conclusion of cross-examination and such oral redirect examination as may be proper, the hearing will be closed and no applications for permission to adduce additional evidence will be entertained unless it is demonstrated that such evidence was not available at the times set for the introduction of direct and rebuttal evidence, and there is a clear and convincing demonstration that the additional evidence would make a material contribution to the record upon which the case is to be decided.

With respect to the evidence sought to be introduced in this proceeding, the parties are enjoined from making presentations which are merely cumulative in nature. With particular reference to individual company cost presentations, we have indicated in a number of orders issued in the Permian Basin area proceeding Docket No. AR61–1, *et al.*, that such presentations are not proper matters for consideration in determining any area price. Having so concluded, we

shall not permit the introduction of individual company cost presentations in these proceedings.

The Commission reiterates statements made in previous orders in which the hearing examiner in area proceedings was requested to expedite the proceedings in every way possible. Where appropriate to do so and without derogation of the rights of any parties, parties having common interests should be grouped, thereby limiting the numbers of persons individually and actively participating. Likewise, the number of attorneys who will be permitted to cross-examine on any issue should be limited.

Various pipeline companies are Respondents in these proceedings by reason of the fact that they are producers in the area, in addition to being purchasers from other producers. Other pipeline companies who are not producers but are purchasers have petitioned to intervene. Two pipeline purchasers are neither Respondents or interveners in the proceedings. By this order the Commission is making these pipeline companies Respondents since the Commission considers that all pipeline purchasers in the area are directly concerned with the determinations which the Commission will be making herein. All contracts heretofore or hereafter entered into by pipeline companies for the purchase of gas in this area are the subject of examination and review by the Commission. Because of the direct concern of the pipeline companies, they should give serious consideration to making affirmative presentations and recommendations in these proceedings.

The order instituting these proceedings contained a listing of all persons who were made Respondents in the proceedings (Appendix "A"), and a listing of rate suspension proceedings consolidated herewith (Appendix "C"). A review of the Commission's records indicates that certain corrections should be made in these listings. The corrections will be made by a separate order which the Commission will issue in these proceedings.

The Commission finds:

(1) It is necessary and appropriate in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act, particularly Sections 4, 5, 7, 8, 10, 14, and 16 thereof, that dates be set for the hearing herein and hearing procedures be prescribed as hereinafter ordered.

(2) It is appropriate and in the public interest that United Gas Pipe Line Company and Louisiana Natural Gas Corporation be made Respondents in these proceedings.

The Commission orders:

(A) The Commission staff is directed to distribute on or before June 10, 1963, to all parties entitled to the same, copies of exhibits containing composites and summaries of data received from Respondents filing Appendices "A", "B" and "C" forms, and of a rate schedule analysis made of rate schedules on file with the Commission for jurisdictional sales of natural gas from the South Louisiana area.

(B) Public hearings shall be held herein, in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C. as follows:

(1) On December 3, 1963, at 10 A.M. for the sole purpose of introducing into the record by the Commission staff and all parties desiring to do so, written testimony and exhibits constituting their complete direct presentations;

(2) On February 18, 1964, at 10 A.M. for the sole purpose of introducing into the record by the Commission staff and all parties desiring to do so, written testi-

mony and exhibits constituting presentations in rebuttal to the direct presentations previously offered; and

(3) On March 17, 1964, at 10 A.M. for the purpose of requiring witnesses to appear and adopt testimony and exhibits previously offered, to be subjected to cross-examination and redirect examination and proceeding to a determination of the issues herein.

(C) Joseph Zwerdling, a duly qualified and appointed Hearing Examiner, or any officer or officers of the Commission designated by the Chief Hearing Examiner for that purpose (see delegation of authority, 27 F.R. 4276, etc.) is designated to act as the presiding examiner in the proceedings as of the date of issuance of this order, and is authorized and directed, in so doing, to exercise all of the functions and authority prescribed by the Administrative Procedure Act and this Commission's Rules of Practice and Procedure, including the holding of such prehearing conferences as he may deem advisable to expedite the proceedings in accordance with the above schedule or as may otherwise be useful.

(D) United Gas Pipe Line Company and Louisiana Natural Gas Corporation are hereby made Respondents in these proceedings.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP62-265; CALIFORNIA-PACIFIC UTILITIES COMPANY, DOCKET NO. CP62-200

ORDER ADOPTING INITIAL DECISION OF PRESIDING EXAMINER

(Issued May 16, 1963)*

Syllabus

1. Commission *issues* certificate of public convenience and necessity under Section 7 of the Natural Gas Act; *grants* application for exemption under Section 1(c) of the Act. P. 984; 988-989.

Robert P. Stranahan, Jr., and *Ezekiel K. Stoddard* for California Pacific Utilities Company.

Herbert A. Goldsmith, Jr., for Public Utility Commissioner of Oregon.

Justin R. Wolf and *Eugene E. Threadgill* for Northwest Natural Gas Company.

George D. Horning, Jr., Patrick G. Sullivan and *C. Frank Reifsnyder* for El Paso Natural Gas Company.

David B. Ward for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

By initial decision issued April 18, 1963, the presiding examiner in the above-entitled proceedings issued a certificate of public convenience and necessity to El Paso Natural Gas Company and declared the facilities to be constructed by California-Pacific Utilities Company to be exempt from the provisions of the Natural Gas Act and the orders, rules and regulations of the Commission thereunder.

The time for filing exceptions to said decision has passed and no exceptions having been filed, the matter is now properly before us.

The Commission orders:

The initial decision of the presiding examiner issued on April 18, 1963, is adopted as the decision of the Commission in these proceedings effective as of the date of this order.

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*Initial decision appears on p. 985. Amended July 2, 1963, 30 FPC 16.

INITIAL DECISION
OF THE PRESIDING EXAMINER UPON APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND APPLICATION FOR EXEMPTION

(Issued April 18, 1963)

WESTON, Presiding Examiner: In this proceeding, El Paso seeks to extend its existing pipeline and gas supply facilities into a presently unserved area of southwestern Oregon. El Paso, therefore, is applying for a certificate of public convenience and necessity to render the new service to California-Pacific, the existing gas distributor in the general area. California-Pacific's operations on consummation of the project would be entirely intra-Oregon and entirely subject to control by the Oregon Public Service Commissioner, and this local company, therefore, seeks an exemption from Federal Power Commission jurisdiction in the event that El Paso's project is approved.

Specifically, El Paso has an existing mainline running south from Portland[1] to a terminus in Eugene. El Paso here seeks authority to extend this mainline a distance of approximately 127.6 miles to the south, to a point of termination near the community of Grant's Pass, Oregon. California-Pacific would install laterals on this segment of the line to serve residential and industrial areas.

At Grant's Pass, California-Pacific would pick up the construction of the mainline and continue it for approximately 53½ miles along a southeasterly route to a terminus near the town of Ashland, just north of the California border. California-Pacific would also connect the distribution facilities to serve this segment of the mainline. Exhibit No. 1 shows that 16 communities would, under the project, receive natural gas service for the first time; four of the communities (Ashland, Roseburg, Grant's Pass, and Medford) are now served with manufactured gas.

El Paso's facilities would principally consist of 4400 HP of additional compression and 6.0 miles of 16-inch and 121.6 miles of 10¾ inch pipeline, costing $7,693,000. California-Pacific's pipeline would start at 10-inch diameter, narrowing successively to 8 and 6 inches, and its total costs, including distribution facilities would be $5,277,622.

The Market.—California-Pacific has carefully studied over a period of years the potential market for natural gas in this territory. The domestic market was canvassed by visual observation, including the counting of houses and the notation of houses with propane or fuel oil tanks above ground. This is the conventional survey method for the domestic market; in the prior experience, no instance is recalled where it led to overestimation. Staff's criticism of the method (Br. 9) appears unjustified, especially where used, as here, by an expert of undisputedly high qualifications.

The industrial market is estimated on the basis of conventional "letters of intent." Witness Cooper's most up-to-date estimates show slightly over 50 percent of revenues to El Paso from industrial sales during the first five years of operations (Exh. 5A). His prior estimates (Exh. 5) show industrial revenues commencing at 61.24 percent for the first year, decreasing to 56.74 percent in the fifth year.

On the incremental basis, which is the usual basis for measuring new service, revenues would exceed cost of service after the third year (Exh. 5B).

The market is to a substantial extent based on actual service of manufactured gas in the sizable communities of Roseburg, Grant's Pass, Medford, and Ash-

[1] Ultimately, the line extends to the Canadian border and also connects with the remainder of El Paso's Northwest Division system.

land. The savings to existing customers from natural gas would be approximately 30 percent below existing rates.

California-Pacific's market for manufactured gas, in actual experience, has shown steady growth. Sales have expanded 31 percent since 1959. Since the beginning of 1960, residential sales have increased 26 percent and commercial sales have increased 48 percent, for a combined increase of 36 percent. Average usage of gas per customer has increased 16 percent for residential users and 32 percent for commercial users. Industrial consumers have also increased their usage.

The California-Pacific market estimates are fully supported by testimony on behalf of the Oregon Public Utilities Commissioner. Witness David Don, who testified for the Commissioner, has for 20 years been the Chief Engineer on the Commissioner's staff, and official notice may be taken of his high and impeccable reputation in the regulatory field.

Mr. Don testified as to the experience in other Oregon areas as to markets, after natural gas was introduced into these areas. In the lower Willamette Valley, estimated market data used in FPC Docket No. G–1526 was exceeded by actual sales for the 5-year period there used by 51 percent, and second year sales exceeded estimated sales for the fifth year.

In the upper Willamette Valley, where natural gas first become available in 1960, the actual sales in 1961 exceeded estimated sales by 146 percent, and 1962 sales exceeded estimated sales by over 77 percent.

Mr. Don also furnished important data as to population increase in the area of the proposed service. In such area, population has increased 23.45 percent in the ten years between 1950 and 1960, as against a statewide increase for Oregon of 16.3 percent.

Mr. Don, on the basis of his experience in the acceptance of natural gas, and his knowledge of electric power rates and other factors, testified that the California-Pacific market estimates are conservative. His judgment should be given substantial weight on the matter of the potential market.

The Facilities.—There is no question but that the facilities proposed for the project are adequate and safe. Actual construction will be phased to match market requirements, to the extent possible. Alternative service by way of extension of El Paso's existing pipeline through Klamath Falls (to the east) was studied and found to be more costly than the projects here presented.

If full service under maximum estimates is rendered to both firm and interruptible customers, it would amount to 33.125 MMcf per day, which is 1.865 MMcf more than the 31.260 MMcf flow capacity shown in Exhibit No. 8. However, the Ideal Cement Company plant, which is one the largest interruptible customers, plans to shut down operations during the months of December and January of each year, and this portion of capacity (about 2500 Mcf per day) is larger than the 1.865 MMcf overage. Of course, there is in any event no adverse implication to be drawn from the possibility that interruptible customers may have to be interrupted. In the usual case of minimal interruptions, revenue effects are also minimal. There is no indication that the present case is exceptional in this regard.

The Revenues.—El Paso's estimated revenues have been computed on the basis of applying proposed Rate Schedules DI–5 and I–5 to California-Pacific's estimated market. These rate schedules are identical in respect of price with the rate levels authorized by the Commission for El Paso's service in the Klamath Falls area of southeastern Oregon (Docket No. CP60–15). These rates are the minimum to offset incremental cost-of-service after the three to five year developmental period projected as a range in Exhibit Nos. 5, 5A, and

5B. No reason has been shown to make any change in the Docket No. CP60-15 rates, which, on the most recent estimates, will produce revenues of $1,595,706 first year, $2,561,735 second year, $3,045,475 third year, $3,287,547 fourth year, and $3,414,291 fifth year.

Financing and Other Aspects of the Project.—El Paso will finance the facilities from current working capital supplemented as necessary from short-term bank loans. In the future, long-term bonds or other securities will in the conventional manner replace the short-term debt.

Gas supply of 5,840,546 Mcf per year required for the project is minor in comparison with El Paso's total gas supply, and will not require El Paso to add any reserves specifically allocated to the project.

California-Pacific has all the necessary franchise rights to serve in the new area.

In general, the uncontroverted testimony shows that when natural gas is introduced into a new area, growth and development of that area and of nearby areas (in this case, the whole State of Oregon) is enhanced. Perhaps for this reason, Northwest Natural Gas Company, a distributor serving a different area, intervened in support of California-Pacific's project. No distributors or other interested parties served by El Paso intervened in opposition to the project. Northwest Natural's support must be taken into consideration in evaluating Staff's doubts as to whether or not the project may have adverse rate effects on El Paso's other customers.

Conditions to Certificate Suggested by Staff.—The excellence of the project and the presentation by proponents of the new service is matched by the zeal of Staff Counsel in exploring possible weaknesses of the project. Staff has suggested the possibility that the project may be over-optimistic in regard to estimated industrial load, and asks that the Commission require California-Pacific to obtain firm 10-year contracts from the industrial customers to be served. Staff also suggests that the certificate for the project be conditioned so that El Paso cannot use any claim of revenue deficiences based on third-year operations in connection with any future El Paso rate case.

Pages 8, 9, and 10 of Exhibit No. 1 herein list some forty-one firm and interruptible industrial customers (including four institutional customers). Each one of these customers was interviewed and each expressed a desire to convert to natural gas. Annual and maximum day requirements for the first through the fifth year were carefully estimated. Letters of intent were secured from each industrial customer with qualification in respect of the comparatively unimportant quantities to be supplied to the Veterans Administration Hospital at Roseburg, Oregon. The witness who made the survey of potential industrial load is highly experienced.

Applicants did not rest their presentation solely on Exhibit No. 1. In answer to requests from the Staff, applicants prepared a tabulation showing a comparison of existing fuel costs with natural gas costs for the industrial customers proposed to be served by California-Pacific in the third year of operation (Exh. 11). The tabulation shows 11 conversions from heavy oil, 9 conversions from propane, two conversions each from coal, chips, and hog fuel, and one conversion from diesel oil, with savings in each case, except in three cases where figures for cost of chips and hog fuel are not available. The total savings for all interruptible consumers is estimated to amount to $652,590 out of present costs of $2,399,492, or a total savings of 27 percent in fuel costs.

It may be noted that no coal or oil deposits exist in the area of the new service. Competition is limited accordingly. Competition from manufactured gas now in use will, of course, disappear entirely when natural gas service

is introduced. Competition for the fuel market from wood-waste material can be expected to disappear over a period of time, as wood-waste continues to become an important source of hardboard and other products (Tr. 13). The forecast of acceptance of natural gas for industrial use in the projected service area is thoroughly warranted by the record facts. There is no reason to demand, in this case, the unusual and hardly obtainable 10-year firm commitment of industrial load as suggested by Staff.

With regard to Staff's proposed "rate" condition, it should be noted that the proposal for such a condition is, to say the least, novel and unconventional. Under the proposal, El Paso would presently assume the burden of an insurer of the revenue levels forecast by the testimony for the new service. Such a burden has no precedent, so far as current research shows. In a different context—*e.g.*, where a project desired by El Paso for reasons unconnected with the public interest in extending gas service, in which the evidence showed a strong possibility of adverse future effects on El Paso's rates to other customers—the proposed rate condition might deserve serious consideration. In the present context, where all the evidence points toward a reasonably secure financial situation from the extension, and where the public desire for new gas service is very clear, a rate condition would not be fair or reasonable.

Formal Findings of Fact

(1) El Paso Natural Gas Company is a "natural-gas company" within the meaning of the Natural Gas Act, and is an interstate pipeline company.

(2) The facilities involved in these applications will be used to transport and sell natural gas in interstate commerce and are subject to the jurisdiction of the Commission and the requirements of Section 7 of the Natural Gas Act, except as hereinafter found.

(3) California-Pacific Utilities Company is a California corporation engaged, *inter alia*, in the transportation, sale and distribution of natural gas in the States of California, Nevada, and Oregon.

(4) All facilities which California-Pacific will construct, operate, and maintain pursuant to its application herein will be located within the State of Oregon. All natural gas used in connection with such facilities will be interstate gas received by California-Pacific from El Paso within the State of Oregon and all such gas will ultimately be consumed within the State of Oregon.

(5) These facilities will not be connected with any other part of California-Pacific's distribution and transportation facilities for natural gas operations.

(6) These facilities and the natural gas rates and services relating to the operation of these facilities will be subject to the regulatory jurisdiction and actually regulated by the Public Utility Commissioner of the State of Oregon.

(7) The project described in the applications herein and in the record is convenient and necessary for the public in the areas to be served, and will not, on the record facts adduced, burden other consumers, and should be authorized without conditions or limitations.

Order

Wherefore, it is ordered, subject to review by the Commission, as provided in its Rules of Practice and Procedure, that:

(A) A certificate of public convenience and necessity is hereby issued to El Paso Natural Gas Company for the sales and transportation of natural gas in interstate commerce for resale, and for the construction and operation of facilities therefor, all subject to the jurisdiction of the Commission, as set forth in the application filed in this proceeding.

(B) The certificate issued herein shall be accepted in writing and under oath within 30 days from the date of the final determination of these proceedings in accordance with the Commission's Rules of Practice and Procedure.

(C) The general terms and conditions of Section 157.20 of the Regulations under the Natural Gas Act shall attach to the issuance of the certificate herein granted to El Paso Natural Gas Company, and the time when the facilities hereby authorized shall be constructed and placed into operation is hereby fixed at six months from the date of the issuance of this order.

(D) The grant of the certificate made herein is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceedings now pending or hereafter instituted by or against the applicant.

(E) The facilities of California-Pacific Utilities Company to be located in the State of Oregon which are described in California-Pacific's application in these proceedings, and the operations of such facilities, when constructed and put into operation as hereinabove described, will be exempt from the provisions of the Natural Gas Act and the orders, rules and regulations of the Commission issued thereunder.

ROBERT M. WESTON,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

HOUSTON NATURAL GAS PRODUCTION COMPANY (OPERATOR), ET AL., DOCKET NO. G–19730

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, REQUIRING REFUND, AND TERMINATING PROCEEDING

(Issued May 16, 1963)

On September 28, 1959, Houston Natural Gas Production Company (Operator), *et al.*, (Houston) tendered for filing a notice of change in its presently effective FPC Gas Rate Schedule No. 2, covering the jurisdictional sale of natural gas to Texas Gas Pipe Line Corporation (Texas Gas) from the Big Hill Area, Jefferson County, Texas, and from South Mayes Field, Chambers County, Texas (Railroad Commission District No. 3). By order issued October 22, 1959, in Docket No. G–19730, the proposed increased rate of 16.5¢ per Mcf at 14.65 psia, including tax reimbursement, designated as Supplement No. 21 to Houston's FPC Gas Rate Schedule No. 2, was suspended until March 29, 1960, when, upon proper motion, it became effective subject to refund.

On April 4, 1963, Houston submitted, in accordance with Section 1.18(e) of the Commission's Rules of Practice and Procedure, an Offer of Settlement in the proceeding in Docket No. G–19730. Under the terms of the offer, Houston proposes to eliminate the price redetermination and periodic escalation clauses from the rate schedule involved, and to establish a settlement rate of 15.0¢ per Mcf, including present tax reimbursement, effective as of the date of issuance of this order, for the remaining life of the contract. Houston also proposes to refund to Texas Gas all amounts collected in excess of the settlement rate plus interest at the rate of 7% per annum to the date of refund.

In support of its offer, Houston cites the deletion of the price redetermination and periodic escalation provisions from its gas purchase contract with Texas Gas, and states that such provisions were important elements of consideration required by Houston under the contract for the long-term commitment of its

gas reserves to the performance of the contract. Texas Gas has stated that it has no objection to the proposed settlement.

Since the proposed settlement rate of 15.0¢ per Mcf at 14.65 psia is acceptable under the provisions of the Second Amendment[1] to the Commission's Statement of General Policy No. 61–1,[2] for jurisdictional sales of natural gas in Texas Railroad Commission District No. 3, it is believed that the public interest will best be served by accepting Houston's proposed settlement as hereinafter set forth.

However, we desire to make it clear that acceptance of this offer of settlement shall not be construed as approval of any future increased rates proposed by Houston.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the Offer of Settlement filed by Houston with the Commission on April 4, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by Houston with the Commission on April 4, 1963, is hereby approved in accordance with the provisions of this order.

(B) Houston shall file, within 30 days from the date of issuance of this order, a notice of change providing for the 15.0¢ per Mcf rate, including present tax reimbursement, specified in its Offer of Settlement and a contractual amendment to its FPC Gas Rate Schedule No. 2, which Houston shall execute with Texas Gas in conformity with Houston's Offer of Settlement in all respects. Both the notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Within 30 days from the date of issuance of this order, Houston shall refund to Texas Gas all amounts collected under its FPC Gas Rate Schedule No. 2, in excess of the settlement rate of 15.0¢ per Mcf, together with simple interest at the rate of 7% per annum, from the date of receipt of such excess amounts by Houston to the date of refund. Houston shall bear all costs incidental to the making of such refunds.

(D) Within 45 days from the date of issuance of this order, Houston shall report to the Commission in writing the details of its calculations resulting in refunds ordered pursuant to paragraph (C) above, together with a copy of a release from Texas Gas with respect to such refunds.

(E) Upon notification by the Secretary of the Commission that Houston has complied with the terms and conditions of this order, the rate and charge of 15.0¢ per Mcf, including present tax reimbursement, specified in the Offer of Settlement shall be effective as of the date of issuance of this order, the proceeding in Docket No. G–19730 shall be deemed terminated, and Houston's refund obligation with respect to the proceeding in Docket No. G–19730 shall be deemed discharged.

(F) The acceptance of this Offer of Settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending or hereafter instituted by or against Houston.

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[1] Issued December 20, 1960, 24 FPC 1107; amended by Order No. 264, in Docket No. R–234, issued March 27, 1963, 29 FPC 589.

[2] Issued September 28, 1960, 24 FPC 818 (18 CFR, Chapter I, Part 2, Section 2.56).

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 77

ORDER DETERMINING NET CHANGE IN ACTUAL LEGITIMATE ORIGINAL PROJECT COST AND PRESCRIBING ACCOUNTING THEREFOR

(Issued May 16, 1963)

Pacific Gas and Electric Company, Licensee for Project No. 77,[1] from time to time filed statements, pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming for the period from January 1, 1950 through December 31, 1960 project additions and retirements resulting in a $564,104.85 net increase or change in project cost over the previously determined amount of actual legitimate original cost of the project, $4,203,346.92 as of December 31, 1949.[2] This amount of $564,104.85 is comprised of gross additions of $623,412.97, gross retirements of $65,558.12, and a debit adjustment of $6,250.00, resulting in a claimed total actual legitimate original cost of the project as of December 31, 1960 of $4,767,451.77, as more specifically shown in the attached schedule.[3]

The Commission's staff made a field examination of the books and records of Licensee and other data for the purpose of ascertaining the correctness of the above claimed project cost changes. The staff proposes no adjustments to the claimed project cost changes and resulting project cost.

Staff analysis of Licensee's provisions for project depreciation has not been completed, and the staff recommends that the Commission defer for future consideration and determination the amount of accrued depreciation applicable to inservice project properties as of December 31, 1960.

The staff recommends and Licensee, by its letter dated April 13, 1962, concurs that the Commission determine: (1) the net increase or change in the actual legitimate original cost of the project for the period from January 1, 1950 through December 31, 1960 to be $564,104.85, comprised of gross additions of $623,412.97, gross retirements of $65,558.12, and a debit adjustment of $6,250.00, the individual primary plant account changes being shown in the attached schedule; and (2) the actual legitimate original cost of the project as of December 31, 1960 to be $4,767,451.77, classified by primary plant accounts as shown in the attached schedule.

The Public Utilities Commission of California was advised by letter of this Commission dated July 18, 1962 of the net increase or change in project cost and the resulting project cost, all as recommended by the staff and concurred in by Licensee, as set forth above. By letter dated July 20, 1962 that Commission indicated its concurrence therewith.

The Commission finds:

(1) The acceptance herein of Licensee's claimed net increase or change in project cost and resulting project cost and the Public Utilities Commission of California by its letter dated July 20, 1962 with respect thereto, have obviated

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[1] Project No. 77-California (Potter Valley), was constructed partly prior and partly subsequent to the original issuance of license therefor under Sections 23 and 4(d), respectively, of The Federal Water Power Act. The license provides for the determination by the Commission of the actual legitimate original cost of the project, except certain portions, previously constructed, for which it provides for the determination of fair value thereof as of April 15, 1922 (the date of issuance of the license).

[2] See Commission order issued September 26, 1958 (20 FPC 422).

[3] During the period January 1, 1950 through December 31, 1960 Licensee recorded upon its books of account adjustments to claimed project costs for the period prior to January 1, 1950 in the net credit amount of $43,855.04, and representing items previously disallowed as project cost by the Commission's order issued September 26, 1958 (20 FPC 422).

the necessity for notice and opportunity to protest provided by Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The net increase or change in the actual legitimate original cost of the project for the period from January 1, 1950 through December 31, 1960 is $564,104.85, comprised of gross additions of $623,412.97, gross retirements of $65,558.12, and a debit adjustment of $6,250.00; and the actual legitimate original cost of the project as of December 31, 1960 is $4,767,451.77; all as more specifically shown in the attached schedule.

(3) It is necessary and appropriate for the purposes of the Federal Power Act that the determination of the accrued depreciation applicable to inservice project properties of Project No. 77 as of December 31, 1960 be reserved for future Commission consideration as hereinafter provided.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed plant accounts for Project No. 77 showing the debit amount of $564,104.85 as the net increase or change in the actual legitimate original cost of the project for the period from January 1, 1950 through December 31, 1960, and the total debit balance of $4,767,451.77 as the actual legitimate original cost of the project as of December 31, 1960, all as more specifically shown in the attached schedule classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) The matter of Commission determination of the accrued depreciation applicable to inservice project properties of Project No. 77 as of December 31, 1960 is hereby expressly reserved for future Commission consideration and decision.

Project No. 77 (Potter Valley) Pacific Gas & Electric Co.—Actual legitimate original cost

Account [1]		Allowed cost as of Dec. 31, 1949 [2]	Claimed changes from Jan. 1, 1950 through Dec. 31, 1960	Allowed cost as of Dec. 31, 1960
No.	Title			
	HYDRAULIC PRODUCTION PLANT			
320	Land and land rights	$124,514.62	$34,029.95	$158,544.57
321	Structures and improvements	70,747.08	861.84	71,608.92
322	Reservoirs, dams, and waterways	3,487,263.75	467,730.38	3,954,994.13
323	Water wheels, turbines, and generators	249,849.24	14,420.69	264,269.93
324	Accessory electric equipment	123,894.68	19,571.98	143,466.66
325	Miscellaneous power plant equipment	5,695.64	1,973.06	7,668.70
326	Roads, railroads, and bridges		4,499.27	4,499.27
	Total hydraulic production plant	4,061,965.01	543,087.17	4,605,052.18
	TRANSMISSION PLANT			
340	Land and land rights	216.00		216.00
343	Station equipment	124,044.90	13,364.07	137,408.97
	Total transmission plant	124,260.90	13,364.07	137,624.97
	GENERAL PLANT			
370	Land and land rights	7,555.00		7,555.00
378	Communication equipment	9,566.01	7,653.61	17,219.62
	Total general plant	17,121.01	7,653.61	24,774.62
	Total electric plant in service	4,203,346.92	564,104.85	4,767,451.77

[1] Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts for Public Utilities and Licensees effective prior to Jan. 1, 1961.
[2] See Commission Order issued Sept. 26, 1958 (20 FPC 422).

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 96

ORDER DETERMINING NET CHANGE IN ACTUAL LEGITIMATE ORIGINAL PROJECT COST AND PRESCRIBING ACCOUNTING THEREFOR

(Issued May 16, 1963)

Pacific Gas and Electric Company, Licensee for Project No. 96,[1] filed statements, pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming for the period from January 1, 1941, through December 31, 1954, project additions, retirements and net debit adjustments resulting in (1) a $219,371.77 net increase in project cost over the previously determined amount of actual legitimate original cost of the project, $6,291,903.26 as of December 31, 1940, and (2) a resulting total claimed actual legitimate original cost of the project as of December 31, 1954, of $6,511,275.03.[2] The claimed net increase of $219,371.77 results from claimed and recorded project gross additions of $238,473.10, gross retirements of $110,168.01, and net debit adjustments of $91,066.68, as more specifically shown in the attached schedule.

The Commission's staff made an examination of the books and records of Licensee and other data for the purpose of ascertaining the correctness of the claimed amounts. As the result of this examination, the staff proposes no adjustments to the claimed and recorded costs.

Staff analysis of Licensee's provisions for project depreciation has not been completed, and the staff recommends that the Commission defer for future consideration and determination the amount of accrued depreciation applicable to inservice project properties for the period subsequent to December 2, 1922, the effective date of the license for Project No. 96. The Commission by order dated March 28, 1932 (Twelfth Annual Report of the Federal Power Commission, page 110), found the project reserve for depreciation to be $89,849.69 as of December 2, 1922.

The California Public Utilities Commission was advised by letter of this Commission dated May 17, 1962, of the project costs as recommended by the Commission's staff and claimed by the Licensee as set forth above. By letter dated May 29, 1962, that Commission indicated no objection thereto.

The Commission finds:

(1) The acceptance herein of Licensee's claimed net increase or change in project cost and resulting project cost and the California Public Utilities Commission's letter of May 29, 1962, obviate the necessity for notice and opportunity to protest provided in Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

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[1] The project is located on the San Joaquin River, in the vicinity of Auberry, in the Counties of Madera and Fresno, California, and may be referred to as the Kerckhoff project. The license, authorizing the operation and maintenance of the constructed project, was issued to San Joaquin Light & Power Corporation for a period of 50 years commencing December 2, 1922. By order dated October 10, 1939 (2 FPC 622), the Commission *inter alia* approved the transfer of the license to Pacific Gas and Electric Company effective as of the date of conveyance of project properties.

[2] Article 14 of the license and Section 4 of the Federal Power Act provide for Commission determination of the actual legitimate original cost of the project and of additions thereto and betterments thereof, whether incurred prior to the effective date of the license or on or after such date.

(2) The net increase or change in the actual legitimate original cost of Project No. 96 (Kerckhoff) for the period from January 1, 1941, through December 31, 1954, is $219,371.77, consisting of gross additions of $238,473.10, gross retirements of $110,168.01, and net debit adjustments of $91,066.68, and the resulting total actual legitimate original cost of the project as of December 31, 1954 is $6,511,275.03.

(3) It is necessary and appropriate for the purposes of the Federal Power Act that the determination of the accrued depreciation applicable to inservice project properties of Project No. 96 for the period subsequent to December 2, 1922, be reserved for future Commission consideration as hereinafter provided.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purpose of this order.

(B) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed project plant accounts, showing the debit amount of $219,371.77 as the net change in the actual legitimate original cost of the project during the period from January 1, 1941, through December 31, 1954, and the amount of $6,511,275.03 as the actual legitimate original cost of the project as of December 31, 1954, all as more specifically shown in the attached schedule classified by primary plant accounts of the Commission's Uniform System of Accounts prescribed for Public Utilities and Licensees.

(C) The matter of Commission determination of the accrued depreciation applicable to inservice project properties of Project No. 96 for the period subsequent to December 2, 1922, is hereby expressly reserved for future Commission consideration and decision.

Project No. 96 (Kerckhoff) Pacific Gas & Electric Co.—Actual legitimate original cost

Account [1]		Allowed original cost as of Dec. 31, 1940 [2]	Changes from Jan. 1, 1941 through Dec. 31, 1954	Allowed original cost as of Dec. 31, 1954
No.	Title			
	HYDRAULIC PRODUCTION PLANT			
320	Land and land rights	$3,091.13		$3,091.13
321	Structures and improvements	520,469.51	$46,532.50	567,002.01
322	Reservoirs, dams, and waterways	4,176,631.24	53,778.88	4,230,410.12
323	Water wheels, turbines, and generators	743,918.75	4,353.11	748,271.86
324	Accessory electric equipment	113,646.93	(9,362.76)	104,287.17
325	Miscellaneous power plant equipment	35,347.58	9,888.23	45,235.81
326	Roads, railroads, and bridges	14,865.45	167.13	15,032.58
	Total hydraulic production plant	5,607,970.59	105,357.09	5,713,327.68
	TRANSMISSION PLANT			
340	Land and land rights	9,811.35	5,396.48	15,207.83
341	Clearing land and rights-of-way	12,804.71	14,878.00	27,682.71
343	Station equipment	243,495.36	1,395.58	244,890.94
344	Towers and fixtures		100,948.14	100,948.14
345	Poles and fixtures	138,731.73	(21,111.20)	117,620.53
346	Overhead conductors and devices	273,059.20	10,601.86	283,661.06
349	Roads and trails	562.40	(75.40)	487.00
	Total transmission plant	678,464.75	112,033.46	790,498.21
	GENERAL PLANT			
378	Communication equipment	5,467.92	1,981.22	7,449.14
	Total cost of project	6,291,903.26	219,371.77	6,511,275.03

( ) Denotes credit.

[1] Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts effective prior to Jan. 1, 1961.

[2] See Commission Order Issued Feb. 26, 1948 (7 FPC 404).

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PORTLAND GENERAL ELECTRIC COMPANY, PROJECT NO. 2195

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL PROJECT COST; NET CHANGE THEREIN; AND PRESCRIBING ACCOUNTING THEREFOR

(Issued May 16, 1963)

Portland General Electric Company, Licensee for Project No. 2195,[1] on June 23, 1960, filed its initial statement, pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming for Project No. 2195 an actual legitimate original cost of $17,263,395.94,[2] as of October 31, 1959. In addition, Licensee's books and records show for the period from November 1, 1959, through December 31, 1960, a net increase in project cost of $210,594.58, resulting in a total claimed or recorded project cost of $17,473,990.52, as of December 31, 1960. The recorded net increase of $210,594.58 in the cost of the project results from recorded project gross additions of $315,442.55, project gross retirements of $121,610.15, and debit adjustments of $16,762.18, all as more specifically shown in the attached schedule.

The Commission's staff made a field examination of the books and records of Licensee and other data for the purpose of ascertaining the correctness of the claimed project cost as of October 31, 1959, the recorded project cost changes and resulting project cost as of December 31, 1960.

Following that examination, an agreement subject to Commission approval was reached between the staff and Licensee's representatives with respect to certain proposed adjustments involving (1) the reclassification within the project plant accounts of $35,420.01 as of October 31, 1959 and $15,228.04 for the period from November 1, 1959, through December 31, 1960; (2) the elimination of a total amount of $143,370.68, from claimed or recorded project cost as of December 31, 1960, consisting of net reductions of $197,131.05 in the initial claimed project cost as of October 31, 1959, and $36,239.63 in the recorded project cost changes for the period from November 1, 1959, through December 31, 1960; and (3) the accounting disposition for the foregoing amounts.

Based upon the proposed adjustments, the resulting revised actual legitimate original cost of Project No. 2195 as of October 31, 1959, is $17,156,264.89; the resulting revised net increase or change in the project cost for the period November 1, 1959, through December 31, 1960, is $174,354.95, consisting of project gross additions of $307,906.05, project gross retirements of $142,239.81, and debit adjustments of $8,688.71; and the resulting revised actual legitimate original cost of the project as of December 31, 1960, is $17,330,619.84.

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[1] The project is located on the Clackamas River in Clackamas County, Oregon, and is known as the North Fork Hydroelectric Project. The license, authorizing the construction, operation and maintenance of the project, was issued (pursuant to Section 4(e) of the Federal Power Act) for a period of 50 years effective September 1, 1956, 17 FPC 58. The project was placed in commercial operation on December 8, 1958.

[2] Article 20 of the license provides for Commission determination of the actual legitimate original cost of the project and of any additions thereto or betterments thereof.

The proposed eliminations from project cost in the net total amount of $143,370.68 as of December 31, 1960 are composed of the following items of deletions from and additions to project claimed and recorded cost:

Initial project cost:	
Salvage credit for material, temporaly facilities and construction equipment	($9,623.78)
Nonproject preliminary investigation, land and clearing costs	(38,280.13)
Project costs recorded in other plants and not claimed	22,430.73
Indirect and overhead costs related to other project and nonproject plant	(93,293.56)
Additional interest during construction resulting from use of average instead of licensee's tentative in-service dates	11,635.69
Total	(107,131.05)
Project cost changes:	
Overstatement of recorded adjustments to land accounts	($6,859.05)
System overheads applicable to property retired	(20,629.66)
Cost of road and transformers charged in error to the project	(6,648.12)
Operating expenses improperly capitalized	(2,102.80)
Total	(36,239.63)
Net total as of Dec. 31, 1960	(143,370.68)

The accounting disposition of the amounts involved in the proposed adjustments so as to bring Licensee's recorded project cost as of December 31, 1960, into agreement with the recommended project cost as of that date as tentatively agreed to between Licensee and the staff is shown by the following composite journal entry:

Account No.[1]		Debit	Credit
101	Electric Plant in service:		
	Project No. 2030 (Pelton)		$1,342.30
	Project No. 135	$81,987.30	
	Nonproject	41,811.17	
107	Construction work in progress—		
	Electric Project No. 2030 (Round Butte)	1,471.72	
121	Nonutility property	1,114.75	
186	Miscellaneous deferred debits	5,585.75	
108	Accumulated provision for depreciation of electric plant in service—		
	Project No. 2195	20,629.66	
401	Operation expense	2,102.80	
216	Unappropriated earned surplus		9,990.17
101	Electric plant in service—		
	Project No. 2195		143,370.68

[1] Account references are to account numbers and titles prescribed in the Commission's revised Uniform System of Accounts for Public Utilities and Licensees, effective January 1, 1961, except the attached schedule, which employs account numbers and titles prescribed in the Commission's Uniform System of Accounts prior to January 1, 1961. This reflects the fact that items of project cost were entered upon Licensee's books of account prior to January 1, 1961.

By letter dated December 18, 1961, Licensee confirmed its agreement to the staff's proposed adjustments, including the accounting dispositions, and resulting project costs and changes therein, all as set forth above.

The Oregon Public Utility Commissioner was advised by letter of this Commission dated June 5, 1962, of the proposed adjustments, including the accounting dispositions and resulting project costs and changes therein, all set forth above. That Commissioner by letter dated June 13, 1962, indicated no objection to the foregoing.

The Commission finds:

(1) Licensee, by its tentative agreement to the proposed adjustments, accounting dispositions and the resulting project costs, and the Public Utility Commissioner of Oregon by his letter dated June 13, 1962, have obviated the necessity for notice and opportunity to protest provided by Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments, including the accounting dispositions, are reasonable and appropriate for the purposes of the Federal Power Act, and therefore should be approved and directed as hereinafter provided.

(3) The actual legitimate original cost of Project No. 2195 as of October 31, 1959, is $17,156,264.89; the net increase or change in the actual legitimate original cost of Project No. 2195 for the period from November 1, 1959, through December 31, 1960, is $174,354.95, comprised of gross additions of $307,906.05, gross retirements of $142,239.81, and debit adjustments of $8,688.71; and the resulting actual legitimate original cost of the project as of December 31, 1960, is $17,330,619.84, all classified by primary plant accounts as shown by the attached schedule.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments and accounting dispositions, as proposed by the staff and agreed to by the Licensee, are hereby approved and directed to be made by the Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed plant accounts for Project No. 2195, showing the debit balance of $17,156,264.89 as of October 31, 1959; the debit amount of $174,354.95 as the net increase or change in the project cost for the period November 1, 1959, through December 31, 1960; and the total debit balance of $17,330,619.84 as the actual legitimate original cost of the project as of December 31, 1960, all as more specifically shown in the attached schedule classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(D) Licensee shall within 90 days from the issuance of this order file with the Commission FPC Form No. 7 and three certified copies of its adjusting journal entries showing compliance with this order.

Project No. 2195 (North Fork) Portland General Electric Co.—Actual legitimate original cost

Account		Initial cost as of Oct. 31, 1959				Changes from Nov. 1, 1959 through Dec. 31, 1960			
No.	Title	As claimed	Staff proposed adjustments	Allowed cost		As recorded	Adjustments	As allowed	Allowed original cost as of Dec. 31, 1960
				Before distribution	After distribution				
	INTANGIBLE PLANT								
302	Franchises and consents	$7,544.44	($4,390.27)	$3,154.17	$3,346.56				$3,346.56
	HYDRAULIC PRODUCTION PLANT								
320	Land and land rights	324,014.56	(29,276.97)	294,737.59	353,812.59	$17,846.67	$5,142.54	$22,989.21	376,801.80
321	Structures and improvements	873,004.38		873,004.38	1,045,139.80	25,931.73		25,931.73	1,071,071.53
322	Reservoirs, dams, and waterways	9,634,957.69	8,428.93	9,643,386.62	11,576,439.66	102,230.55	(37,072.12)	65,158.43	11,641,598.09
323	Water wheels, turbines, and generators	1,991,461.17		1,991,461.17	2,390,614.77	6,515.88		6,515.88	2,397,130.65
324	Accessory electric equipment	277,930.26	(5,585.75)	272,344.51	326,931.21	23,872.80		23,872.80	350,804.01
325	Miscellaneous powerplant equipment	173,156.42		173,156.42	207,862.28	5,459.42	(2,102.80)	3,356.62	211,218.90
326	Roads, railroads, and bridges	28,624.58	35,420.01	64,044.59	76,881.22	16,130.50	(2,366.10)	13,764.40	90,645.62
	Total hydraulic production plant	13,303,149.06	8,986.22	13,312,135.28	15,977,681.53	197,987.55	(36,398.48)	161,589.07	16,139,270.60
	TRANSMISSION PLANT								
340	Land and land rights	127,176.86	(21,330.36)	105,846.50	125,421.31	1,002.01	156.85	1,160.86	126,582.14
341	Clearing land and rights-of-way	67,947.52	(4,284.75)	63,662.77	76,144.98	(236.91)		(236.91)	75,908.07
342	Structures and improvements	88,615.60		88,615.60	105,772.89	490.52		490.52	106,263.47
343	Station equipment	264,325.44		264,325.44	316,325.54	718.22		718.22	317,043.71
345	Poles and fixtures	196,155.08		196,155.08	233,670.86	1,060.18		1,060.18	234,731.06
346	Overhead conductors and devices	250,170.69		250,170.69	297,625.43	8,434.05		8,434.05	306,059.48
	Total transmission plant	994,391.19	(25,615.11)	968,776.08	1,134,961.01	11,460.07	158.85	11,626.92	1,166,587.93
	GENERAL PLANT								
378	Communication equipment	17,211.51		17,211.51	20,275.79	1,138.96		1,138.96	21,414.75
	Total direct costs	14,322,296.20	(21,019.16)	14,301,277.04	17,156,264.89	210,594.58	(36,239.63)	174,354.95	17,330,619.84

	INDIRECT CONSTRUCTION COSTS									
61	Temporary construction facilities	88,553.66	(10,672.23)	77,881.43						
62	Construction equipment	30,273.97	2,021.85	32,295.82						
64	Labor expenses	2,074.19	(83.3)	1,990.85						
65	Superintendence, timekeepers, clerks, etc	465,394.06	(18,740.15)	447,653.91						
66	Insurance, injuries and damages	14,671.51	(508.16)	14,303.35						
	Total indirect construction costs	602,167.39	(26,042.03)	574,125.36						
	OVERHEAD CONSTRUCTION COSTS									
70	Engineering and construction fees	133,333.33	4,508.23	137,841.56						
71	Engineering	1,180,185.66	(19,394.92)	1,160,790.74						
75	Taxes	78,590.93	(8,923.52)	69,667.41						
76	Administrative and general expenses	45,259.51	(2,545.51)	42,714.00						
77	Interest during construction	886,562.92	(36,714.14)	849,846.78						
	Total overhead construction costs	2,338,932.35	(58,069.86)	2,280,862.49						
	Total indirect and overhead costs	2,941,099.74	(86,111.89)	2,854,987.85						
	Total cost of project	17,263,395.94	(107,131.05)	17,156,264.89	17,156,264.89	210,594.58)	(36,239.63)	174,354.95	17,330,619.84	

( ) Denotes credit.

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Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP63-247

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 16, 1963)

On March 4, 1963, as amended on March 29, 1963, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP63-247 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and sale of an additional 104,139 Mcf of natural gas per day to existing customers and to construct and operate pipeline facilities necessary to render said service, all as more fully set forth in the application, as amended.

Applicant proposes to render the following additional service commencing with the 1963-64 winter heating season:

Type of service	*Additional maximum contract quantity (peak day at 14.73 psia)*
General service customers	45,175
Contracted demand customers	30,100
Storage service customers	4,000
Total sales for resale	79,275
Transportation for Iroquois Gas Corporation [1]	24,864
Total proposed sales and transportation	104,139

[1] Such volumes of natural gas will be purchased by Iroquois Gas Corporation from Valley Gas Transmission, Inc.

Applicant proposes to construct and operate the following facilities:

32,650 additional horsepower at new and existing compressor stations
1,000 horsepower relocation
270.87 miles of additional 30- and 36-inch O.D. loop lines
8 miles of 6-inch pipeline replacement

The application shows the total estimated cost of the proposed facilities to be $56,169,000.

Applicant states that, due to the severity of the past winter, it will be necessary for Applicant to construct during the summer of 1963 all of the herein proposed facilities. The application indicates that, because of pipeline capacity limitations, Applicant will be unable to inject sufficient gas into storage during the summer of 1963 to meet existing authorized deliveries and the proposed additional peak day requirements of its customers. The application indicates further that, without installation of the proposed facilities by November 1, 1963, Applicant will be unable to meet the peak day requirements of its customers after the middle of February 1964, assuming that the coming winter is not colder than normal and that Applicant's contract demand customers do not take at a 100% load factor. Further, it is indicated, that without the proposed facilities, if Applicant's contract demand customers do take gas at 100% load factor, Applicant cannot meet its customers' peak day requirements after January 31, 1964, again assuming that the coming winter is no colder than normal. Accordingly, Applicant states that, in order to meet the estimated requirements of its customers commencing with the 1963-64 winter heating season, Applicant must construct all of the facilities herein proposed and place same in operation during 1963.

Pursuant to due notice, a public hearing was held in Washington, D.C., on May 2, 1963, respecting the matters involved in and the issues presented by the application, as amended, in this proceeding. A number of petitions to intervene and a notice of intervention have been filed herein by various interested companies and the Pennsylvania Public Utility Commission. In all cases, the burden of such filings has been that the petitioners did not request formal hearing in these proceedings and did not object to the hearing and disposition of the subject application under the shortened procedure provided for by the Commission's Rules, but that each petitioner desired to preserve its rights to appear and participate fully in the event that these matters should be set for formal hearing. Inasmuch as the abridged hearing procedure is being used herein, no further action on the various intervention petitions and notice appears necessary.

No protests to the granting of the application having been received, and no other appearances having been entered at the hearing, staff counsel moved orally that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 12, 1947, in Docket No. G–910 (6 FPC 777).

(2) The facilities hereinbefore described, as more fully described in the application, as amended, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) The certificate issued hereinafter should be conditioned upon the issuance of a permanent certificate in Docket Nos. CP60–94, G–16842, *et al.*, authorizing the facilities constructed by Applicant pursuant to temporary authorization granted in said proceedings. Further, the certificate issued hereinafter, authorizing the transportation service for Iroquois Gas Corporation, should be conditioned upon the issuance of a certificate to Valley Gas Transmission, Inc., authorizing the sale of natural gas to Iroquois.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record

and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Tennessee Gas Transmission Company, to construct and operate the proposed facilities and to transport, sell and deliver natural gas as hereinbefore described, all as more fully described in the application, as amended, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation, sales and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

(D) The certificate issued by paragraph (A) above is hereby conditioned upon the issuance of a permanent certificate in Docket Nos. CP60-94, G-16842, *et al.*, authorizing the facilities constructed by Applicant pursuant to temporary authorization granted in said proceedings. Further, the certificate issued by paragraph (A) above, authorizing the transportation service for Iroquois Gas Corporation, is hereby conditioned upon the issuance of a certificate to Valley Gas Transmission, Inc., authorizing the sale of natural gas to Iroquois.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

YUBA COUNTY WATER AGENCY, PROJECT NO. 2246; PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 187

ORDER ISSUING LICENSE AND ACCEPTING SURRENDER OF LICENSE

(Issued May 16, 1963)*

Application was filed on June 14, 1961, and amended on October 9, 1961, and February 14, 1963, by Yuba County Water Agency (Applicant) of Marysville, California, for license for a proposed project, known as Yuba River development and designated as Project No. 2246, to be located on the Yuba River and its tributaries, North Yuba River, Middle Yuba River, and Oregon Creek, in the Counties of Yuba, Nevada, and Sierra, California, and affecting lands of the United States within Plumas and Tahoe National Forests, and utilizing the existing Engelbright Dam and Reservoir pursuant to the Act of June 25, 1938 (52 Stat. 1040).

The proposed project would comprise a principal storage dam and reservoir with gross storage capacity of 930,000 acre-feet, three diversion dams, two diversion tunnels with aggregate length of about 5 miles, three power tunnels totaling about 4.8 miles in length serving three power plants having an installed generating capacity of 295,000 kilowatts, and an afterbay dam. According to the application, the project energy would be sold to Pacific Gas

*Modified upon rehearing, 30 FPC 1610.

and Electric Company (Pacific) at the powerhouses of the proposed project for transmission over Pacific's facilities for distribution within its service area.

The proposed project would affect certain hydroelectric facilities of Pacific, including the inundation of Pacific's licensed Bullards Bar Projcet No. 187. Because of this interference, Pacific petitioned to intervene in this proceeding, and was permitted to intervene by Commission order issued October 20, 1961. Intervention was permitted also to the State of California, acting through its Department of Fish and Game (California), by Commission order issued November 2, 1961.

On January 25, 1963, Pacific filed an "offer to Surrender License" for its Project No. 187, on the conditions that Project No. 2246 be constructed under a Commission license and that Pacific receive just compensation for the inundation of its Project No. 187 by Applicant's proposed project. Applicant plans to construct a new power tunnel intake within the New Colgate Diversion Reservoir and a new segment of power tunnel to allow continued operation of Pacific's Colgate project. Applicant also proposes to negotiate with Pacific with respect to damages resulting from inundation of Pacific's Project No. 187.

By its order issued August 15, 1962, the Commission scheduled a public hearing on the application which was held on January 29, 1963. At the hearing, Pacific appeared in support of Applicant's request for a license for its proposed Project No. 2246. Intervener, California did not appear at the hearing, having announced at a prehearing conference held on September 6, 1962, that California and the Applicant had entered into an agreement which covers the major aspects of the project.

In accordance with the provisions of Section 1.30(c) of the Commission's Rules of Practice and Procedure [18 C.F.R. 1.30(c)] counsel for Applicant requested that the intermediate decision procedure be omitted and such request was concurred in by all of the participating parties.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, advised that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned; that special terms and conditions in the interest of navigation were not considered necessary; and requested that any license issued for the project require the licensee to operate the project for flood control, to contract with the Corps for the use of the Engelbright Reservoir, as contemplated in the Act of June 25, 1938 (52 Stat. 1040), and to assume liability for any damage to the Engelbright project resulting from construction of Project No. 2246.

The Department of the Interior, in reporting on the application, recommended certain special conditions for inclusion in any license issued for the project to protect the interests of the Department. Several of the recommended conditions are included in a contract between Applicant and the Bureau of Reclamation dated December 6, 1962.

The Department of Agriculture, in reporting on the application, advised that the project would not interfere or be inconsistent with the purpose for which the Plumas and Tahoe National Forests were created or acquired, provided any license issued for the project contain certain special conditions in the interests of the Department. On April 13, 1962, a "Memorandum of Understanding" was entered into between Applicant and the U.S. Forest Service covering: the conduct of work during the construction and operation of the project; a project fire plan; clearing and cleanup, including timber sales, debris disposal and stump removal; protection of forest lands and resources, replacement of forest facilities;

construction of new roads; road maintenance; land acquisition; recreation; schedule of project operations; stream pollution; and certain general considerations. On September 17, 1962, Applicant and the Forest Service entered into a "Cooperative Agreement" under which Applicant agrees to finance to an amount of $3,000 (plus certain expenses) the study and preparation by the Forest Service of an "Area Recreation Public Use Plan" to be completed by June 30, 1963.

The California Department of Fish and Game, in reporting on the application, recommended for inclusion in any license issued for the project certain conditions in the interests of fish and wildlife resources in the project area. The recommended conditions are essentially those agreed to by Applicant in its agreement with California dated November 28, 1962.

The California Department of Water Resources, in reporting on the application, recommended that Applicant assume any additional construction cost or loss of generation at Project No. 2246 by reason of construction and operation of the downstream Marysville Reservoir which might be constructed by either the United States or the State of California. In an agreement with the California Department, dated May 23, 1962, Applicant agrees to assume any such cost and loss.

The Commission finds:

(1) Applicant is a "municipality" as defined in the Federal Power Act, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license for the project.

(2) The proposed project will affect a Government dam and lands of the United States.

(3) Public notice of the filing of the application has been given as required by the Act.

(4) Applicant having requested omission of the intermediate decision procedure, and all the requirements of the provisions of Section 1.30(c) of the Commission's Rules of Practice and Procedure having been satisfied, sufficient cause exists for the Commission forthwith to render its final decision in the instant proceeding.

(5) The issuance of a license for the project as hereinafter provided will not interfere or be inconsistent with the purposes for which the Plumas and Tahoe National Forests were created or acquired.

(6) The issuance of a license for the project will not affect the development of any water resources for public purposes which should be undertaken by the United States, under the terms and conditions hereinafter imposed.

(7) The project is best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, under the terms and conditions hereinafter imposed.

(8) The installed horsepower capacity of the proposed project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 393,000 horsepower.

(9) The amount of annual charges to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act, is reasonable as hereinafter fixed and specified.

(10) The amount of annual charges to be paid the United States under the license for the use, occupancy and enjoyment of its lands should be hereafter determined by the Commission as hereinafter provided.

(11) The exhibits hereinafter designated and described in ordering paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

(12) Commission acceptance of Pacific's afore-mentioned "Offer to Surrender License" for Project No. 187 is appropriate and in the public interest as hereinafter provided.

The Commission orders:

(A) This license is hereby issued to Yuba County Water Agency, of Marysville, California (Licensee) under Section 4(e) of the Federal Power Act (Act) for a period of 50 years, effective as of May 1, 1963, for the construction, operation and maintenance of Project No. 2246, affecting lands of the United States within the Plumas and Tahoe National Forests and a Government dam and lands of the United States adjacent thereto; subject to the terms and conditions of the Act which is incorporated by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2246 consists of:

(a) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the applicant or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed a part of the application for license and which are designated and described as follows:

Exhibit	*FPC No. 2246-*	*Title*
J-1 (Amended)	30	"Yuba River Development—General Map;"
J-2	5	"Bullards Bar & Middle Yuba-Oregon Creek Diversion Projects—General Map;"
J-3 (Amended)	31	"Colgate and Narrows Projects—General Map;"
K-1 (Revised)	36	"Bullards Bar Project—Reservoir Map;"
K-2 through K-8	8 through 14.	"Bullards Bar Project—Reservoir Map;"
K-9	15	"Middle Yuba-Oregon Creek Diversion Project, Log Cabin & Hour House Reservoir Map;"
K-10 (Revised)	37	"Colgate Project—Detailed Map;"
K-11	17	"Narrows Project—Detailed Map;" and
K-12 (Amended)	32	"Timbuctoo Afterbay Dam—Reservoir Map"

(b) All project works consisting principally of:

1. An imprevious core, rockfill dam; designated New Bullards Bar Dam and located on North Yuba River, about 633 feet high above streambed and about 1,800 feet long at its crest, with a gated side—channel spillway upstream from the left abutment, creating a reservoir with gross storage capacity of 930,000 acre-feet and water surface area of 4,600 acres at normal maximum operating surface at Elevation 1,995; a power pressure tunnel about 1,500 feet long

in the left abutment; and a power plant located on the left river bank near the toe of the dam with total installed capacity of 132,000 kilowatts in two similar generating units;

2. A concrete arch dam, designated Hour House Diversion Dam and located on Middle Yuba River upstream from its confluence with Oregon Creek, about 90 feet high above streambed and about 370 feet long on the top axis, with an ungated, overflow type spillway centered on the dam, creating a reservoir with gross capacity of approximately 615 acre-feet and surface area of about 18 acres at normal maximum operating surface at Elevation 2,030 feet;

3. A concrete arch dam, designated Log Cabin Diversion Dam and located on Oregon Creek upstream from its confluence with Middle Yuba River, about 70 feet high above streambed and about 255 feet long at the top, with an ungated, overflow type spillway centered on the dam, creating a reservoir with gross capacity of approximately 220 acre-feet and surface area of about 8.5 acres at normal maximum operating surface at Elevation 1,970 feet;

4. A gravity-flow tunnel, designated Loham Ridge Tunnel and extending approximately 19,700 feet from Hour House Diversion reservoir to Log Cabin Diversion reservoir;

5. A gravity-flow tunnel, designated Camptonville Tunnel and extending approximately 6,750 feet from Log Cabin Diversion reservoir to New Bullards Bar reservoir;

6. A concrete gravity dam, designated New Colgate Diversion Dam and located on North Yuba River downstream from New Bullards Bar dam, about 50 feet high above streambed and about 230 feet long, with central ungated ogee spillway section having its crest at Elevation 1,350 feet, creating a reservoir with negligible effective storage capacity; a power pressure tunnel incorporating a surge chamber and extending about 22,400 feet from an intake structure at the diversion dam to the head of a 2,300 foot long double, steel penstock of New Colgate power plant; such power plant, located on the right bank of Yuba River downstream from the confluence of North and Middle Yuba Rivers, with total installed capacity of 122,000 kilowatts in two similar generating units;

7. A power pressure tunnel, designated New Narrows Power Tunnel and extending about 1,600 feet from an intake structure on the right bank of Yuba River immediately upstream from existing Englebright dam of the California Debris Commission to the head of a 230-foot long steel penstock of New Narrows Power Plant; such power plant, located on the north bank of Yuba River downstream from Englebright dam, with installed capacity of 41,000 kilowatts in one generating unit;

8. An impervious core, rockfill dam, designated as Timbuctoo Afterbay Dam and located on Yuba River downstream from Englebright dam, approximately 83 feet high above streambed and about 750 feet long, with an independent ungated spillway and ogee weir in the left abutment and with a by-pass tunnel, creating a reservoir with gross storage capacity of 5,700 acre-feet and water surface area of 200 acres at normal maximum operating surface at Elevation 305 feet;

9. A substation at each power plant; and appurtenant hydraulic, mechanical and electrical facilities and miscellaneous project works—the location, nature and character of which structures are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which formed

part of the application for license and which are designated and described as follows:

Exhibit	*FPC No. 2246-*	*Entitled*
L-1	19	"Bullards Bar Project—New Bullards Bar Dam—General Arrangement;"
L-5	23	"Bullards Bar Project—New Bullards Bar Power Plant—Plans & Cross Section;"
L-6	24	"Middle Yuba—Oregon Creek Diversion Project—Log Cabin Dam & Camptonville Tunnel;"
L-7	25	"Middle Yuba—Oregon Creek Diversion Project—Hour House Dam & Lohman Ridge Tunnel;"
L-8	26	"Colgate Project—Diversion Dam, Tunnel & Power Plant—General Arrangement;"
L-9	27	"Colgate Project—New Colgate Power Plant—Plans & Cross Section;"
L-10 (Amended)	33	"Narrows Project—General Arrangement;"
L-11	29	"Narrows Project—New Narrows Power Plant—Plans & Cross Section;"
L-12	34	"Colgate Project—New Colgate Diversion Dam—General Arrangement;"
L-13	35	"Narrows Project—Timbuctoo Afterbay Dam—General Arrangement;" and
Exhibit M	----	Comprised of two typewritten pages entitled "General Description of Mechanical, Electrical, and Transmission Equipment" filed June 14, 1961.

(c) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-6, December 15, 1953, entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters and Lands of the United States" (16 FPC 1121) which terms and conditions, designated as Articles 1 through 27, are attached hereto and made a part hereof, except for Articles 9, 14, 15, 16, 17, 23 and 24 thereof, and subject to the following special conditions set forth herein as additional articles:

Article 28. The Licensee shall commence construction of the project works within one year of the effective date of this license, shall thereafter in good faith and with due diligence prosecute such construction, and shall complete construction within 4½ years from the effective date of this license.

Article 29. The Licensee shall within one year from the date of completion of the project, file with the Commission revised Exhibits F and K to define the final project boundary in accordance with the rules and regulations of the Commission.

Article 30. The Licensee shall submit, in accordance with the Commission's rules and regulations, final design Exhibit L drawings for the finally adopted

New Bullards Bar Dam and Spillway and shall not begin construction of these or any project works contingent thereon until the Commission has approved the Exhibit L drawings.

Article 31. The Licensee shall construct, maintain and operate such protective devices and shall comply with such reasonable modifications of the project structures and operation in the interest of fish and wildlife resources, provided that such modifications shall be reasonably consistent with the primary purpose of the project, as may be prescribed hereafter by the Commission upon its own motion or upon recommendation of the Secretary of the Interior or the California Department of Fish and Game after notice and opportunity for hearing and upon a finding that such modifications are necessary and desirable and consistent with the provisions of the Act: *Provided further,* That subsequent to approval of the final design drawings prior to commencement of construction no modifications of project structures in the interest of fish and wildlife resources which involve a change in the location, height or main structure of a dam, or the addition of or changes in outlets at or through a dam, or a major change in generating units, or a rearrangement or relocation of a powerhouse, or major changes in a spillway structure shall be required.

Article 32. Whenever the United States shall desire, in connection with the project, to construct fish handling facilities or to improve the existing fish handling facilities at its expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such fish handling facilities or such improvements thereof. In addition, after notice and opportunity for hearing the Licensee shall modify the project operation as may be prescribed by the Commission, consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish handling facilities constructed or improved by the United States under the provision of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish handling facilities or to relieve the Licensee of any obligation under this license.

Article 33. The Licensee shall maintain the following minimum streamflow schedules for maintenance of fishlife in the several streams listed:

(a)

Stream	Flow (cfs)[1]	
	April 15 to June 15	June 16 to April 14
Middle Yuba (below Hour House Diversion)	50	30
Oregon Creek (below Log Cabin Diversion)	12	8
North Yuba (below New Colgate Diversion)	5	5

[1] Or natural flow, whichever is less, measured at a point not more than 500 feet downstream of dam. Maximum 24-hour fluctuations of plus or minus 10 percent are permitted except for the flows below New Colgate Diversion.

(b)

Stream	Flow (cfs) [1]		
	January 1 to June 30	July 1 to September 30	October 1 to December 31
Yuba River (below Timbuctoo Dam)	245	70	400

[1] Measured at a point not more than one-half mile downstream from the Irrigation Diversion Weir and *provided* that these flows shall be in addition to releases made to satisfy existing downstream water rights.

(c) Water releases for fishlife as specified in paragraph (a) and (b) of this article shall be subject to the following reduction in any critical dry year, defined as a water year for which the April 1 forecast of the California Department of Water Resources predicts that streamflow in the Yuba River at Smartville will be 50 percent or less of normal:

Yuba River at Smartville streamflow forecast percent of normal	*Reduction in water releases for fishlife, percent*
50	15
45	20
40 or less	30

However, in no year shall releases below Timbuctoo Afterbay Dam be reduced to less than 70 cfs. The critical dry year provisions herein shall be effective from the time the aforesaid forecast is available until the April 1 forecast of the following year.

Article 34. The Licensee shall maintain the following minimum pools: at New Bullards Bar Reservoir at Elevation 1,730 feet; and at Timbuctoo Afterbay Dam as high as possible under the power and irrigation demand schedule.

Article 35. The Licensee shall so regulate releases from Timbuctoo Afterbay Dam during normal operation that they shall not fluctuate at an hourly rate of more than 300 cfs, such fluctuations to be measured within one-half mile below Timbuctoo Afterbay Dam.

Article 36. The Licensee shall construct and maintain at Timbuctoo Afterbay Dam such facilities for trapping and removing salmon and steelhead trout as have been approved by the Commission.

Article 37. The Licensee shall take whatever steps are required to prevent entry into any streams or waters in or below the project area of any clay, silt, fines, sand, gravel, detritus, oil, or other substance deleterious to fish and aquatic life and/or their habitat, resulting from construction or operation of the project.

Article 38. The Licensee shall construct and operate the project in a manner to provide for minimum possible alteration of natural fish and wildlife habitat, consistent with reasonable economic practices.

Article 39. Mitigation of damages to wildlife resulting from project activities shall be made by the Licensee as directed by the Commission based upon investigations by the California Department of Fish and Game and the Licensee as to the extent of such damages and means of mitigation, or upon recommendation of the Secretary of the Interior or of the Secretary of Agriculture.

Article 40. The outlet works at the New Bullards Bar Dam shall be so located as to provide water temperatures at New Colgate Diversion Dam at least comparable to existing temperatures with respect to the salmon and shad fishery resources.

Article 41. The Licensee shall, prior to impounding water, clear the area of the project reservoirs as follows: *New Bullards Bar Reservior*—All vegetation between Elevations 1,700 feet and 1,955 feet and *Other Project Reservoirs*—All lands in the bottoms and margins up to high-water level; shall clear and keep clear to an adequate width lands of the United States along open conduits; and shall dispose of all temporary structures, unused timber, brush, refuse, or inflammable material resulting from the clearing of the lands or from the construction and maintenance of the project works. In addition, all trees along the margins of reservoirs which may die from operation of the reservoir shall be removed. The clearing of the lands and the disposal of the material shall

be done with due diligence and to the satisfaction of the authorized representative of the Commission.

Article 42. The Licensee shall strip and stockpile top soil from all borrow areas prior to borrow operations, and shall regrade these areas as practicable and replace top soil upon completion of borrow operations. Additionally, all borrow areas on lands of the United States shall be revegetated with browse species. This stipulation does not apply to areas to be inundated by reservoirs.

Article 43. All construction activity shall be carried on with the least possible erosion damage and least possible disfiguration of the landscape. Insofar as practicable, spillways from dams and conduits shall be located in natural stream channels and/or on relatively stable material.

Article 44. During construction of the project, the Licensee shall keep a road open across the North Yuba River in the vicinity of Bullards Bar, at all times, for National Forest use and protection.

Article 45. The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned to prevent, make advance preparations for suppression, and suppress fires on the lands to be occupied or used under the license. The Licensee shall be liable for and pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the work appurtenant or accessory thereto under the license.

Article 46. The Licensee shall operate the project reservoirs for flood control in accordance with rules prescribed by the Secretary of the Army, such rules to be specified in a formal agreement between the Licensee and the District Engineer, U.S. Army Engineers District, Sacramento, California, and said agreement to be subject to review from time to time as requested by either party.

Article 47. The Licensee shall enter into contractual arrangements with the District Engineer, U.S. Army Engineer District, Sacramento, California, pursuant to the River and Harbor Act of June 25, 1938, with respect to supplying storage for water in the Corps' Englebright Reservoir for power development at the New Narrows Power Plant, upon such conditions of delivery, use and payment as the Secretary of the Army may approve, such payments to be deposited to the credit of the Englebright Reservoir.

Article 48. The Licensee shall assume liability for any structural damage to the U.S. Corps of Engineers' Englebright Project incurred as a result of construction of the proposed New Narrows power facilities.

Article 49. The Licensee shall operate the project in such manner as will not conflict with future depletion of the water of the Yuba River and its tributaries or prevent or interfere with the future diversion and use of such water for the irrigation of lands or other beneficial consumptive uses.

Article 50. The Licensee shall enter into a formal agreement with the Bureau of Reclamation on river operations within the Yuba Basin which agreement shall be subject to the approval of the Commission.

Article 51. The Licensee shall negotiate with the National Park Service for archeological survey and salvage within project reservoir sites to be accomplished prior to inundation and to be financed by the Licensee in an amount not to exceed $60,000.

Article 52. The Licensee shall not commence construction of any of the project works of the New Colgate Development until the Commission has approved the final design for New Bullards Bar Dam.

Article 53. The Commission reserves the right to determine at a later date what additional transmission facilities, if any, shall be included in this license as part of the project works.

Article 54. The Licensee shall install additional capacity and make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 55. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 56. The Licensee shall, within one year from the effective date of this license, file with the Commission a recreational use plan for the project which shall include not only recreational improvements which may be provided by others, but the recreational improvements the Licensee plans to provide.

Article 57. The Licensee shall pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part 11 of the Commission's regulation. The authorized installed capacity for such purpose is 393,000 horsepower.

(ii) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands, including those used for transmission line right-of-way, an amount to be determined hereafter by the Commission.

(D) Pacific's afore-mentioned "Offer to Surrender" its license for Project No. 187, filed January 25, 1963, is hereby accepted, effective upon agreement for payment by Applicant of just compensation for properties of Pacific in Project No. 187 needed for Project No. 2246 and the occurrence of conditions which make discontinuance of the operation of Project No. 187 necessary to avoid interference with the construction or operation of Project No. 2246 by Applicant.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313 (a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license for Project No. 2246, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

(F) In acknowledgment of the acceptance of the foregoing paragraph (D) of this order, the attached form of acceptance shall be signed for Pacific Gas and Electric Company and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

ALGONQUIN GAS TRANSMISSION COMPANY, DOCKET NO. CP60-124 AND DOCKET NO. CP61-220

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 17, 1963)

On December 18, 1962, Algonquin Gas Transmission Company (Applicant) filed in Docket Nos. CP60-124 and CP61-220 an application to amend the Com-

mission's Opinion and Order issued December 17, 1962, 28 FPC 1035, in said dockets to authorize the increase in sales of natural gas, therein authorized, to Fall River Gas Company (Fall River), Brockton Taunton Gas Company (Brockton) and Norwood Gas Company (Norwood) by 1,000 Mcf per day, 402 Mcf per day and 66 Mcf per day, respectively, all as more fully set forth in the application to amend.

Fall River, Brockton and Norwood have requested the additional daily quantities of natural gas in order to meet increased requirements resulting from certain recent housing projects constructed in their service areas.

Algonquin states that it will make the proposed increased sales out of a portion of its unallocated gas supply. No new facilities will be required for said sales.

By letter of January 11, 1963, Applicant was issued a temporary certificate authorizing the proposed additional sales.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on February 14, 1963 (28 F.R. 1437). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's opinion and order, issued December 17, 1962, in Docket Nos. CP60–124 and CP61–220 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's opinion and order, issued December 17, 1962, in Docket Nos. CP60–124 and CP61–220 be and the same is hereby amended to authorize Algonquin Gas Transmission Company to sell and deliver additional daily quantities of natural gas to Fall River, Brockton and Norwood, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said opinion and order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP63–180; PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP63–183

FINDINGS AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 17, 1963)

On December 21, 1962, Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska) filed in Docket No. CP63–180 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities for an interconnection with the pipeline system of Panhandle Eastern Pipe Line Company (Panhandle) in Grant County, Kansas, in order to receive gas from Panhandle at such proposed interconnection, all as more fully set forth in the application.

Kansas-Nebraska proposes to construct and operate approximately 5 miles of 12-inch pipeline in the Hugoton, Kansas Field south of Lakin, Kansas. The

estimated cost of said facilities is $125,000, which cost will be financed out of current working capital.

On December 26, 1962, Panhandle filed in Docket No. CP63–183 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities for the above-mentioned interconnection with the pipeline system of Kansas-Nebraska and the sale and delivery of 10,000,000 Mcf of natural gas, on a short-term interruptible basis, all as more fully set forth in the application.

Panhandle proposes to construct and operate approximately 3 miles of 12-inch pipeline and a measuring station in Grant County, Kansas. The estimated cost of said facilities is $120,000 which cost will be financed from funds on hand.

The proposed sale and delivery by Panhandle to Kansas-Nebraska at the Grant County interconnection will range from 20,000 Mcf to 40,000 Mcf of natural gas per day. Said sale is to be made pursuant to a contract between the two companies, dated December 3, 1962.

Kansas-Nebraska states that it has a need for the subject gas and Panhandle alleges that it has accumulated substantial under-production in the Kansas Hugoton Field making it desirable for Panhandle to dispose of volumes presently in excess of its system requirements. Further, it is stated that the proposed permanent interconnection will provide both companies with greater dependability of supply in meeting possible emergency conditions and offer a beneficial supply arrangement for the future.

Kansas-Nebraska and Panhandle were each issued temporary certificates by letters, dated March 20, 1963.

Pursuant to due notice, a public hearing was held in Washington, D.C., on May 9, 1963, respecting the matters involved in and the issues presented by the applications in Docket Nos. CP63–180 and CP63–183. No petition to intervene or protest to the granting of the applications has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Kansas-Nebraska Natural Gas Company, Inc., a Kansas corporation having its principal place of business in Phillipsburg, Phillips County, Kansas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–259 (3 FPC 966).

(2) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(3) The facilities hereinbefore described, as more fully described in the applications in Docket Nos. CP63–180 and CP63–183, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Kansas-Nebraska and Panhandle and the transportation and sale of natural gas by Panhandle are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities by Kansas-Nebraska and Panhandle and the proposed transportation and sale of natural gas by Panhandle are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Kansas-Nebraska Natural Gas Company, Inc., to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in Docket No. CP63–180, upon the terms and conditions of this order.

(B) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Panhandle Eastern Pipe Line Company, to construct and operate the proposed facilities and to sell and deliver 10,000,000 Mcf of natural gas, on a short-term interruptible basis, to Kansas-Nebraska as hereinbefore described, all as more fully described in the application in Docket No. CP63–183, upon the terms and conditions of this order.

(C) The certificates issued by paragraphs (A) and (B) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP63–200

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 17, 1963)

On January 11, 1963, Northern Natural Gas Company, filed in Docket No. CP63–200 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of measuring the regulating facilities enabling the delivery of interruptible volumes of natural gas to the Woodward State Hospital and School (Hospital), a direct customer, located near Woodward, Iowa, all as more fully set forth in the application.

Applicant through its Peoples Division is presently selling small volumes of firm gas to the Hospital for cooking and water heating use only. A new boiler plant for heating and the generation of electricity is being installed at the Hospital and Applicant and the State Board of Control of Iowa have entered into a

contract for the sale of interruptible gas for use in these new facilities. It is estimated that the annual sales to the Hospital will be in the neighborhood of 154,000 Mcf. Applicant will install measuring and regulating facilities at an estimated cost of $10,200 to be financed from cash on hand or from cash received from the operations.

Pursuant to due notice, a public hearing was held in Washington, D.C., on May 8, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation with its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the natural gas facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

737-369—64——67

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

THE WESTERN COLORADO POWER COMPANY, PROJECT NO. 400

ORDER DETERMINING NET CHANGE IN ACTUAL LEGITIMATE ORIGINAL PROJECT COST; ACCRUED DEPRECIATION AND AMORTIZATION; NET INVESTMENT; AND PRESCRIBING ACCOUNTING THEREFOR

(Issued May 17, 1963)

The Western Colorado Power Company, Licensee for Project No. 400,[1] from time to time filed statements, pursuant to Sections 4.20 and 4.1 of the Commission's Regulations under the Federal Power Act, claiming for the period from January 1, 1937, through December 31, 1958, project additions and retirement resulting in (1) a $1,941,918.40 net increase in project cost over the previously determined amount of actual legitimate original cost of the project, $1,868,445.94 as of December 31, 1936,[2] and (2) a resulting total claimed actual legitimate original cost of the project, $3,810,364.34 as of December 31, 1958. The claimed net increase of $1,941,918.40 results from claimed and recorded project gross additions and gross retirements of $2,078,329.20 and $361,028.97, respectively, and debit adjustments of $224,618.17, as more specifically shown in the attached Schedule I.

Licensee also recorded upon its books of account from time to time entries in its depreciation reserve for Project No. 400 in the net credit amounts of $354,339.00 as of July 1, 1935, and $434,851.95 for the period July 1, 1935 through December 31, 1958, resulting in a credit balance in that account of $789,190.95 as of December 31, 1958.[3] Additionally, Licensee recorded upon its books of account from time to time entries in its project reserve for amortization of limited-term electric investments in the net credit amount of $6,494.00 as of December 31, 1958.

The Commission's staff conducted a field examination of the books and records of Licensee and other data for the purpose of ascertaining the correctness of the above claimed and recorded project costs and reserves for depreciation and the amortization of limited-term electric investments. As the result of this examination, the staff proposes no adjustments to the claimed and recorded costs and reserves for depreciation and amortization. Although the aforementioned credit amount of $789,190.95 as of December 31, 1958, exceeds by $10,119.43 the balance recorded in the project memorandum records, that difference in amount representing a reimbursement from the State of Colorado for relocating a project facility, was credited to Licensee's overall reserve for depreciation and then inadvertently omitted from the project depreciation reserve in the memorandum records. Since Licensee has not yet established a separate depreciation reserve account for Project No. 400, this item will not necessitate any adjustment of Licensee's books of account.

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[1] The project is located on the Animas and San Miguel Rivers in La Plata, San Juan, and San Miguel Counties, Colorado, and may be described as the Tacoma-Ames-Ilium project. The license, authorizing the operation and maintenance of the constructed Tacoma, Ames, and Ilium plants and related facilities was issued (pursuant to Section 4(e) of the Federal Power Act) for a period beginning July 1, 1935 and terminating June 30, 1970. (1 FPC 644.)

[2] The Commission, by order issued September 10, 1951 (10 FPC 1341), determined the actual legitimate original cost of the project, to be $1,868,628.98 as of July 1, 1935 and, $1,868,445.94 as of December 31, 1936.

[3] Articles 17 and 18 of the license and Section 4 of the Federal Power Act provide for Commission determination of the actual legitimate original cost of the project, including any additions thereto and betterments thereof, and accrued depreciation applicable thereto, whether incurred prior to the date of issuance of license or on or after such date.

The Colorado Public Utilities Commission was advised by letter of this Commission dated May 22, 1962, of the project costs, and accrued depreciation and amortization reserves as recommended by the Commission's staff and agreed to by the Licensee, all set forth above. By letter dated June 11, 1962, that Commission indicated that it had no objection thereto.

The Commission finds:

(1) The acceptance herein of Licensee's claimed net increase or change in project cost and resulting project cost, recorded depreciation and amortization reserves, and resulting net investment and the Colorado Public Utilities Commission's letter of June 11, 1962, obviate the necessity for notice and opportunity to protest provided in Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act.

(2) As of the effective date of the license, July 1, 1935, the actual legitimate original cost of Project No. 400 as previously determined is $1,868,628.98, the accrued depreciation applicable to inservice project properties is $354,339.00, and the resulting project net investment is the net amount of $1,514,289.98.

(3) The net increase or change in the actual legitimate original cost of Project No. 400 during the period from January 1, 1937, through December 31, 1958, is $1,941,918.40 over the previously determined actual legitimate cost of the project of $1,868,445.94 as of December 31, 1936. The resulting actual legitimate original cost of the project as of December 31, 1958 is $3,810,364.34.

(4) The net increase or change in the project reserve for depreciation for Project No. 400 for the period from July 1, 1935, through December 31, 1958, is $434,851.95, and the resulting reserve for depreciation applicable to inservice project properties of the Project as of December 31, 1958, is $789,190.95. Nothing contained herein, however, should be construed as approval by the Commission of a particular method of accruing depreciation for later periods.

(5) The reserve for amortization of limited-term electric investments applicable to inservice project properties as of December 31, 1958, is $6,494.00.

The Commission orders:

(A) The provisions of Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act are hereby waived for the purpose of this order.

(B) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed project accounts, showing the debit amount of $1,941,918.40 as the net increase or change in the actual legitimate original cost of the project during the period from January 1, 1937, through December 31, 1958; and the total debit balance of $3,810,364.34 as the actual legitimate original cost as of December 31, 1958; all as more specifically shown in the attached Schedule I classified by plants and by primary accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) Licensee, to the extent that it has not already done so, shall (a) establish and maintain a reserve for depreciation account for Project No. 400 showing the credit balance of $354,339.00 as of July 1, 1935; the credit amount of $434,851.95 as the net increase or change for the period from July 1, 1935, through December 31, 1958; and the credit balance of $789,190.95 as of December 31, 1958; and (b) establish and maintain a reserve for amortization of limited-term electric investments for Project No. 400 showing the credit balance of $6,494.00 as of December 31, 1958; all classified by plants and functional groups as shown in the attached Schedule II. Nothing contained herein shall be construed to preclude the Commission from directing a change in the method of accruing depreciation for later periods.

SCHEDULE I

THE WESTERN COLORADO POWER COMPANY—Project No. 400 (TACOMA-AMES-ILIUM)

ACTUAL LEGITIMATE ORIGINAL COST

	Allowed original cost as of Dec. 31, 1936 [1]	Changes from Jan. 1, 1937–Dec. 31, 1958			Allowed original cost as of Dec. 31, 1958
		As claimed	Adjustments	As adjusted	
(1)	(2)	(3)	(4)	(5)	(6)
NAME OF PLANT					
Tacoma plant	$1,009,684.88	$1,145,415.62		$1,145,415.62	$2,155,100.50
Ames plant	370,912.32	508,718.33		508,718.33	879,630.64
Ilium plant	347,002.97	21,871.31		21,871.31	368,874.28
Transmission and telephone lines	140,845.78	265,913.14		265,913.14	406,758.92
Total electric plant in service—Project No. 400	1,868,445.94	1,941,918.40		1,941,918.40	3,810,364.34
ACCOUNT NO. AND TITLE [2]					
Tacoma plant:					
Intangible plant					
302 Franchises and consents	4,873.88	45.97		45.97	4,919.85
Hydraulic production plant					
320 Land and land rights	64,988.70	6,581.97		6,581.97	71,570.67
321 Structures and improvements	82,446.85	97,505.11		97,505.11	179,951.96
322 Reservoirs, dams and waterways	678,865.40	658,185.49		658,185.49	1,337,050.89
323 Water wheels, turbines, and generators	89,185.85	154,890.85		154,890.85	244,076.70
324 Accessory electric equipment	18,331.15	113,476.22		113,476.22	131,807.37
325 Miscellaneous power plant equipment	9,998.84	10,352.16		10,352.16	20,350.50
326 Roads, railroads, and bridges	3,306.87	30,113.55		30,113.55	33,420.42
Total hydraulic production plant	947,123.16	1,071,105.35		1,071,105.35	2,018,228.51
Transmission plant					
343 Station equipment	53,681.97	68,002.78		68,002.78	121,684.75
Distribution plant					
352 Station equipment	749.22	(511.90)		(511.90)	237.32
General plant					
378 Communication equipment	3,256.65	6,773.42		6,773.42	10,030.07
Total electric plant in service	1,009,684.88	1,145,415.62		1,145,415.62	2,155,100.50

Ames plant:					
Intangible plant					
302 Franchises and consents	1,959.68				1,959.68
Hydraulic production plant					
320 Land and land rights	10,976.48	581.61		581.61	11,558.09
321 Structures and improvements	31,786.21	34,089.01		34,089.01	65,875.22
322 Reservoirs, dams, and waterways	212,842.61	314,960.92		314,960.92	527,803.53
323 Water wheels, turbines, and generator	80,219.93	47,553.63		47,553.63	127,773.56
324 Accessory electric equipment	10,758.52	10,040.67		10,040.67	20,799.19
325 Miscellaneous power plant equipment	2,170.17	2,623.84		2,623.84	4,794.01
326 Roads, railroads, and bridges	582.55				582.55
Total hydraulic production plant	349,336.47	409,849.68		409,849.68	759,186.15
Transmission plant					
343 Station equipment		66,750.78		66,750.78	66,750.78
Distribution plant					
362 Station equipment	16,530.80	29,930.49		29,930.49	46,461.29
General plant					
378 Communication equipment	3,085.36	2,187.38		2,187.38	5,272.74
Total electric plant in service	370,912.31	508,718.33		508,718.33	879,630.64
Ilium plant:					
Intangible plant					
302 Franchises and consents	1,757.40				1,757.40
Hydraulic production plant					
320 Land and land rights	3,953.17				3,953.17
321 Structures and improvements	19,761.92	17,687.63		17,687.63	37,449.55
322 Reservoirs, dams, and waterways	273,906.65	2,191.19		2,191.19	276,097.84
323 Water wheels, turbines, and generators	34,815.16				34,815.16
324 Accessory electric equipment	5,698.74	(50.72)		(50.72)	5,648.02
325 Miscellaneous power plant equipment	246.00	2,060.54		2,060.54	2,306.54
Total hydraulic production plant	338,381.64	21,888.64		21,888.64	360,270.28
Distribution plant					
362 Station equipment	6,334.43	(23.84)		(23.84)	6,310.59
General plant					
378 Communication equipment	529.50	6.51		6.51	536.01
Total electric plant in service	347,002.97	21,871.31		21,871.31	368,874.28

See footnotes at end of table.

SCHEDULE I

THE WESTERN COLORADO POWER COMPANY—Project No. 400 (TACOMA-AMES-ILIUM)—Continued

ACTUAL LEGITIMATE ORIGINAL COST

	Allowed original cost as of Dec. 31, 1936 [1]	Changes from Jan. 1, 1937–Dec. 31, 1958			Allowed original cost as of Dec. 31, 1958
		As claimed	Adjustments	As adjusted	
(1)	(2)	(3)	(4)	(5)	(6)
Transmission and telephone lines:					
Intangible plant					
302 Franchises and consents	$922.41	$441.59		$441.59	$1,364.00
Transmission plant					
340 Land and land rights	1,655.80	2,099.39		2,099.39	3,755.19
341 Clearing land and rights-of-way	2,441.58	20,765.71		20,765.71	23,207.29
342 Structures and improvements	1,074.71	(1,074.71)		(1,074.71)	
343 Station equipment		5,346.80		5,346.80	5,346.80
345 Poles and fixtures	40,268.63	133,213.20		133,213.20	173,481.83
346 Overhead conductors and devices	52,987.88	89,288.72		89,288.72	142,276.60
349 Roads and trails		1,360.70		1,360.70	1,360.70
Total transmission plant	98,428.60	250,999.81		250,999.81	349,428.41
Distribution plant					
350 Land and land rights	880.14	1,527.17		1,527.17	2,407.31
354 Poles, towers, and fixtures	11,807.55	7,263.91		7,263.91	19,071.46
355 Overhead conductors and devices	20,958.62	5,316.10		5,316.10	26,274.72
Total distribution plant	33,646.31	14,107.18		14,107.18	47,753.49
General plant					
378 Communication equipment	7,848.46	364.56		364.56	8,213.02
Total electric plant in service	140,845.78	265,913.14		265,913.14	406,758.92

(1) By Commission order issued Sept. 10, 1951 (10 FPC 1341).
(2) Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts effective prior to Jan. 1, 1961.
(–) Denotes credit.

SCHEDULE II

THE WESTERN COLORALO POWER COMPANY—Project No. 400 (TACOMA-AMES-ILIUM)

ALLOWED RESERVE FOR DEPRECIATION OF ELECTRIC PLANT IN SERVICE, AND RESERVE FOR AMORTIZATION OF LIMITED-TERM ELECTRIC INVESTMENTS, BY PLANTS, AS OF DEC. 21, 1958

	Tacoma plant	Ames plant	Ilium plant	Transmission and telephone line	Total project
250.1 *Reserve for Depreciation of Electric Plant in Service:* (1)					
Allowed initial accrued depreciation as of the effective date of license, July 1, 1935:					
Hydraulic production	$173,209.00	$74,752.00	$71,036.00		$318,997.00
Transmission	10,903.00			$4,430.00	15,333.00
Distribution	185.00	3,698.00	2,008.00	11,184.00	17,075.00
General	1,67.00	1,183.00	252.00	432,00	2,834.00
Total	185,364.00	79,633.00	73,296.00	16,046.00	354,339.00
Allowed changes in accrued depreciation from July 1, 1935 to Dec. 31, 1958:					
Hydraulic production	233,092.83	1,217.17	150,701.00		385,011.00
Transmission	(1,636.99)	1,518.53		30,306.09	30,187.63
Distribution	(104.91)	6,268.00	1,026.00	11,477.00	18,666.09
General	477.00	(865.77)	201.00	1,175.00	987.23
Total	231,827.93	8,137.93	151,928.00	42,958.09	434,851.95
Depreciation reserve balances as of Dec. 31, 1958:					
Hydraulic production	406,301.83	75,969.17	221,737.00		704,008.00
Transmission	9,266.01	1,518.53		34,736.09	45,520.63
Distribution	80.09	9,966.00	3,034.00	22,661.00	35,741.09
General	1,844.00	317.23	453.00	1,607.00	3,921.23
Total reserve for depreciation	417,191.93	87,770.93	225,224.00	59,004.09	789,190.95
251.1 *Reserve for Amortization of Limited-Term Electric Investments:*					
Allowed changes in reserve for amortization of limited-term electric investments from July 1, 1935 to Dec. 31, 1958, and balances as of Dec. 31, 1958:					
Intangible—302 Franchises and Consents	3,271.00	1,316.00	1,175.00	732.00	6,494.00
Total reserve for depreciation and reserve for amortization	420,462.93	89,086.93	226,399.00	59,736.09	795,684.95

(1) Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts effective prior to Jan. 1, 1961.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

HUMBLE GAS TRANSMISSION COMPANY, DOCKET NO. CP63-175

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 20, 1963)

On December 18, 1962, Humble Gas Transmission Company (Applicant), filed in Docket No. CP63-175 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a measuring station to be located near Jackson, East Feliciana Parish, Louisiana, for the purpose of enabling it to sell natural gas to Gas Utility District No. 1 of East Feliciana Parish, for resale principally in the Villages of Wilson and Norwood, Louisiana and other areas near by.

The estimated cost of the proposed facilities is $1,855 which will be financed from funds on hand.

The initial volume of natural gas to be sold for resale upon an annual basis is 22,000 Mcf and the rate is under Applicants Rate Schedule G-1 of FPC Gas Tariff, Original Volume No. 1.

Pursuant to due notice, a public hearing was held in Washington, D.C., on May 9, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Humble Gas Transmission Company, is a natural gas company within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued on January 29, 1963 in Docket No. CP63-56.

(2) The facilities hereinbefore described, as more fully described in the application, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of

record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Humble Gas Transmission Company, to construct and operate the proposed facilities and to transport and sell natural gas as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

RUSSELL MAGUIRE (FORMERLY RUSSELL MAGUIRE AND JACK P. RAYZOR (OPERATOR), ET AL.), DOCKET NO. G-19633

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, TERMINATING PROCEEDING IN PART, AND REDESIGNATING PROCEEDING

(Issued May 20, 1963)

On April 1, 1963, Jack P. Rayzor (Operator), *et al.*, (Rayzor) submitted, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, an Offer of Settlement in the above-designated proceeding, which relates to the jurisdictional sale of natural gas by Rayzor, under its FPC Gas Rate Schedule No. 6 to Tennessee Gas Transmission Company (TGT) from the Quinn lease, Pelican Field, Liberty County, Texas (Texas Railroad Commission District No. 3). The increased rate of 16.16947¢ per Mcf at 14.65 psia designated as Supplement No. 3[1] to Rayzor's FPC Gas Rate Schedule No. 3, became effective subject to refund on March 22, 1960 under the rate schedule of Rayzor's predecessor, Russell Maguire.

Rayzor acquired the subject properties from Russell Maguire as of January 1, 1961. By order issued April 19, 1962, Rayzor was made corespondent with Russell Maguire in this proceeding, effective as of the date of acquisition of the properties by him.

Under the terms of the offer, which is applicable only to the period subsequent to its acquisition of the properties from Russell Maguire, Rayzor proposes to eliminate the favored-nation, price redetermination, and periodic escalation provisions from its rate schedule and to establish a 15.0¢ per Mcf at

[1] Supplement No. 3 also relates to other properties not involved in this suspension proceeding.

14.65 psia, settlement rate, including present tax reimbursement, for the remaining term of the contract.

In support of its offer, Rayzor cites the deletion of the favored-nation, price redetermination, and periodic escalation provisions from its gas purchase contract with TGT, and states that such provisions were important elements of consideration required by Rayzor under the contract for the long-term commitment of its gas reserves to the performance of the contract. TGT has concurred in the offer.

Since the proposed settlement rate of 15.0¢ per Mcf at 14.65 psia is acceptable under the provisions of the Second Amendment [2] to the Commission's Statement of General Policy No. 61–1, [3] for jurisdictional sales of natural gas in Texas Railroad Commission District No. 3, it is believed that the public interest will best be served by accepting Rayzor's proposed settlement as hereinafter ordered.

However, we desire to make it clear that acceptance of the Offer of Settlement shall not be construed as approval of any future increased rate proposed by Rayzor.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the Offer of Settlement filed by Rayzor with the Commission on April 1, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by Rayzor with the Commission on April 1, 1963, is hereby approved in accordance with the provisions of this order.

(B) Rayzor shall file, within 30 days from the date of issuance of this order, a notice of change providing for the 15.0¢ per Mcf rate, including present tax reimbursement, specified in its offer of settlement and a contractural amendment to its FPC Gas Rate Schedule No. 6, which Rayzor shall execute with TGT in conformity with Rayzor's offer of settlement in all respects. Both the notice of change and the contractural amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Upon notification by the Secretary of the Commission that Rayzor has complied with the terms and conditions of this order, the rate and charge of 15.0¢ per Mcf, including present tax reimbursement, specified in the Offer of Settlement, shall be effective as of January 1, 1961, and the proceeding in Docket No. G–19633, insofar as it relates to Rayzor, shall be deemed terminated, but in all other respects it shall remain in full force and effect.

(D) The proceeding in Docket No. G–19633 is hereby redesignated as "Russell Maguire."

(E) The acceptance of this Offer of Settlement is without prejudice to any findings or determinations that may be made in any proceedings now pending or hereafter instituted by or against Rayzor.

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[2] Issued December 20, 1960, 24 FPC 1107; amended by Order No. 264, in Docket No. R–234, issued March 27, 1963, 29 FPC 589.

[3] Issued September 28, 1960, 24 FPC 818 (18 CFR, Chapter I, Part 2, Section 2.56).

OPINION NO. 388

NORTHERN NATURAL GAS COMPANY, DOCKET NO. G-2409

OPINION AND ORDER APPROVING AMENDMENT OF CERTIFICATE AND AUTHORIZING SALE OF GAS

(Issued May 20, 1963)*

Syllabus

1. Although disagreeing that proposed jurisdictional sale would produce substantial benefits to Northern, Minneapolis Gas and their customers, Commission *concludes* that particular circumstances warrant its certification. P. 1027.
2. While acceptance of prior rate settlement does not preclude inquiry into merits of requested certification, denial of instant application would present substantial variance from situation upon which rate settlement was based P. 1027.
3. Commission *approves* amendment of certificate of public convenience and necessity authorizing Northern to sell gas to distributor for resale at Black Dog Plant. P. 1027.

Commissioner Morgan *not participating.*

Lawrence I. Shaw, F. Vinson Roach, Daniel B. O'Brien, Richard J. Connor, Walter E. Gallagher, Justin R. Wolf, Charles A. Case, Jr., and *Eugene E. Threadgill*, for Northern Natural Gas Company.

J. F. Kinney and *C. A. Ellwanger* for Iowa Public Service Company.

A. R. Renquist for Northern States Power Company.

George C. Pardee for Metropolitan Utilities District of Omaha.

P. L. Farnand, George C. Mastor and *Alonzo B. Seran* for Minneapolis Gas Company.

Duane T. Swanson and *Lloyd J. Marti* for Western Power & Gas Company.

John W. Scott and *Louis L. DaPra* for Minnesota Valley Natural Gas Company.

John A. McGrath, Jerome J. McGrath, Robert E. Lee Hall, Charles W. Stadell and *Welly K. Hopkins* for the Fuel Research Council, Inc., *et al.*

Mark W. Putney for Iowa Power and Light Company.

Thor R. Sonderholm and *William E. Torkelson* for Public Service Commission of Wisconsin.

Richard C. Steffey for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

Ross, *Commissioner:* This is an application by Northern Natural Gas Company (Northern) to amend an outstanding certificate to authorize it to sell gas to Minneapolis Gas Company (Minneapolis) for resale to the Northern States Power Company (Northern States) for use on an interruptible basis as boiler fuel in its Black Dog Electric Generating Station (Black Dog).

A Commission order in 1956[1] authorized Northern to construct and operate a 1.42 mile, 16-inch pipeline in order to make a direct, interruptible, non-jurisdictional sale to Northern States for use in its Black Dog generating station.

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*Initial decision appears on p. 1028.

[1] June 30, 1956, Docket No. G-2409, 15 FPC 1634; aff'd as *National Coal Ass'n.* v. *F.P.C.* (CADC, 1957), 247 F. 2d 86.

During Northern's rate case, Docket No. G–19040, the staff took the position that in allocating costs as between Northern's jurisdictional and non-jurisdictional service, the so-called *Seaboard* formula should be followed. This would have allocated a cost of about 31 cents per Mcf to Black Dog sales, an amount higher than that at which Northern believed it could charge and retain the sale.

Northern then cancelled its contract with Northern States and obtained a temporary certificate from the Commission to continue sales on a jurisdictional basis, the Commission order of July 21, 1961 stating, "We do not favor the utilization of gas for boiler fuel use for marginal savings" but granting temporary authority from August 1, 1961 through September 30, 1961. Despite this limitation, in April of 1962, Northern started delivering gas to Northern States for use at Black Dog, so a Commission order of August 15, 1962 directed that this cease until after a final order herein.

In the meantime, the *Northern* rate case, Docket No. G–19040, was settled and terminated by a Commission order of May 7, 1962 with the commodity charge set at 23.9 cents (and thereby, presumably, eliminating Northern's major rate problem). Thereafter Minneapolis Gas Company filed its Amended Petition of Intervention requesting that Northern's certificate be amended to permit Northern to make a jurisdictional sale to Minneapolis instead of Northern States, with Minneapolis to resell the gas to Northern States for use at Black Dog. This is the present request before the Commission, Northern having also abandoned an earlier proposal that the jurisdictional sale to Black Dog be performed through Northern's newly created subsidiary, Northern Plains Natural Gas Company.

Following a hearing and the submission of briefs, the Examiner made two principal findings upon which he would grant the requested certificate amendment. First, he found that the proposed jurisdictional sale would produce substantial benefits accruing to Northern and its customers by reason of $734,000 of additional net revenues on an annual basis which will be available to defray the costs of serving the firm requirements of its utility customers. The Examiner derived this finding by subtracting a variable cost of 16.56¢ per Mcf as computed by Northern, from Northern's commodity charge applicable to this sale of 23.9¢ per Mcf. The resulting figure of 7.34¢ was multiplied by the annual contract quantity of 10,000,000 Mcf, which produces the $734,000.

Second, the Examiner found that Minneapolis Gas Company and its consumers would be benefitted substantially by reason of the increase in the Minneapolis load factor.

We disagree with these findings. In Northern's recent rate case,[2] we prescribe a commodity charge of 23.9¢ per Mcf in Northern's contract demand and interruptible rate schedules in zone 3. We found this charge to be "reasonable, proper and in the public interest".[3] This finding means that we have determined that Northern's costs, including a specified portion of its fixed costs, should be recovered in the commodity component of Northern's rates. Any suggestion in this case that the costs attributable to one sale under these schedules has a lesser cost would be inconsistent with our finding in the rate case. We believe that the costs attributed to the commodity component of Northern's rates in that case are equally applicable here.[4]

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[2] Docket No. G–19040, *et al.*, order dated May 7, 1962, 27 FPC 915.

[3] *Ibid.*

[4] In any event, it should be noted that the difference between Northern's variable costs and its commodity charge does not represent a "contribution" which would go toward reducing the costs of Northern's utility customers only. Because of the relative costs assigned to jurisdictional and nonjurisdictional sales, the latter customers would be assigned a substantial portion of this "contribution".

We also disagree that Minneapolis Gas Company and its consumers would receive substantial benefits from this sale by reason of the increase in the Minneapolis load factor. It is true that Minneapolis, in making the proposed sale, will have a greater number of units over which to distribute its fixed costs and would improve its load factor. However, under its contract with Northern States, Minneapolis would make the proposed sale at a rate 0.4 of a cent above the effective commodity charge paid by Minneapolis to Northern. On an annual basis, Minneapolis would receive gross revenues of $40,000 from this sale, relatively an insignificant amount.

In the absence of any substantial benefits incident to this sale, the question remains whether certification thereof is required by the public convenience and necessity. The Coal Interests contend that the marginal savings possibly to be realized are insufficient to outweigh the detriment from the dissipation of large volumes of natural gas for boiler fuel purposes. They contend that the need to conserve the limited supplies of natural gas is of paramount importance, and they point to the availability of reasonably priced coal in the area.

We are of the opinion that the particular circumstances relative to this sale warrants its certification. Northern is requesting authority simply to establish a new delivery point to an existing customer. Were it not for the geographical situation existing here, Minneapolis could make this sale to Northern States without filing any application or even notification with this Commission. The same is true with respect to Northern States which is also a customer of Northern and a distributor of natural gas in the St. Paul, Minnesota area. In addition, we note that this sale was contemplated as a jurisdictional sale in the recent settlement of Northern's rate case, with respect to which the Coal Interests were a party and offered no objection. While acceptance of the settlement does not foreclose inquiry into the merits of the certification requested in this proceeding, it is nevertheless true that denial of Northern's application would represent a substantial variance from the contemplated situation upon which the settlement was based. In our opinion, these factors outweigh the arguments advanced by the Coal Interests.

The Commission finds:

It is necessary and proper in the public interest to grant the application by Northern Natural Gas Company to amend the certificate of public convenience and necessity issued to Northern on June 30, 1956, in Docket No. G–2409, 15 FPC 1634, to provide resale town border delivery service to Minneapolis Gas Company who will purchase gas from Northern through such facilities for resale to the Northern States Power Company for use on an interruptible basis in its Black Dog Electric Generating Station.

The Commission orders:

(A) This certificate of public convenience and necessity should be amended as indicated in our findings above.

(B) Except as herein amended all other terms and conditions of the certificate of public convenience and necessity issued to Northern Natural Gas Company in Docket No. G–2409 on June 30, 1956, 15 FPC 1634, shall remain in full force and effect.

Commissioner Morgan *not participating.*

INITIAL DECISION

UPON AN APPLICATION TO AMEND A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 19, 1962)

FRAZEE, *Presiding Examiner:* On July 11, 1961, the Northern Natural Gas Company (Northern Natural) filed an Amendment to its Petition to Amend a Certificate of Public Convenience and Necessity issued to it by an Order of the Federal Power Commission dated June 30, 1956, in Docket No. G–2409 [15 FPC 1634; aff'd *sub nom., National Coal Association* v. *Federal Power Commission* (CADC, 1957), 247 F. 2d 86]. The Order of June 30, 1956, authorized the construction and operation by Northern Natural of 1.42 miles of 16-inch pipeline to make a direct, interruptible, nonjurisdictional sale of natural gas to the Northern States Power Company (Northern States) for use in its Black Dog Lake electric generating station (Black Dog).

The July 11, 1961 Amendment requested that the facilities authorized, constructed and utilized pursuant to such certificate be now authorized for use by Northern Natural to provide additional resale, town border delivery service to Northern States, which company would then purchase natural gas from Northern Natural for use in its Black Dog Station on a jurisdictional basis under Northern Natural's Rate Schedules CD–3 and R–3 pursuant to Northern Natural's standard, town border service agreement.

Hearing on this Amendment to Petition to Amend commenced on July 26, 1961, and was concluded on July 27, 1961. The Fuels Research Council, Inc., and certain related coal industry and labor groups (Coal Interests) as well as seven of Northern Natural's utility customers (including Northern States) were authorized to intervene. The evidence of record at this hearing consisted of eleven exhibits and four items by reference, together with the direct testimony and cross-examination of witnesses presented by Northern Natural and the Coal Interests. All briefs and reply briefs were filed by October 20, 1961.

Subsequent to the filing of briefs and prior to the issuance of an initial decision, Northern Natural's rate proceeding, Docket No. G–19040 *et al.*, was settled and terminated by an order of the Commission dated May 7, 1962, 27 FPC 915.

On April 27, 1962, Northern Natural began delivering natural gas to Northern States for use in its Black Dog generating station, whereupon the Commission on August 15, 1962, 28 FPC 327, issued its "Order to Show Cause and Prohibited use of Facilities for Rendering Direct Industrial Sales." This order directed that Northern Natural cease the utilization of the facilities originally authorized in this docket for making direct industrial sales or jurisdictional sales to Northern States for use in the latter's Black Dog generating station prior to the issuance by the Commission of a final order in this proceeding. The evidence of record shows that Northern Natural ceased making deliveries of gas to Northern States, except for pilot gas, on August 17, 1962. The order further directed that a hearing be held on September 19, 1962, for Northern Natural to show cause why its petition to render jurisdictional sales to Northern States for use in the latter's Black Dog plant should not be dismissed. Northern Natural on September 13, 1962, filed its Petition for Rehearing of the order of August 15, 1962, which was denied by a Commission order issued October 9, 1962, 28 FPC 564.

Prior to the hearing ordered for September 19, 1962, Minneapolis Gas Company (Minneapolis) on September 4, 1962, filed its Amended Petition of Intervention, which was permitted by a Commission order issued on October 9, 1962,

pointing out that it had received permission from the Township of Burnsville, Dakota County, Minnesota, to distribute gas in the area in which Black Dog is located and requesting that the certificate issued on June 30, 1956, in G–2409 be now amended so as to provide that the facilities therein authorized be now authorized to permit Northern Natural to make a town border jurisdictional sale to Minneapolis, instead of Northern States, so that Minneapolis could resell natural gas to Northern States for use by Northern States in the Black Dog generating plant on an interruptible basis. The evidence further shows that Minneapolis has received a permit from the town of Burnsville, Minnesota, to distribute natural gas in a part of that township, including the area in which the Black Dog plant is located, and that Minneapolis is presently distributing natural gas in the township (Tr. RE–255, 272, 273; Ex. RE–12).

As ordered by the Commission, the hearing in this matter was convened on September 19, 1962. Northern Natural offered, and there was received into the record, four exhibits and eight items by reference to the Commission's files supported by statements of counsel designed to show cause why its application should not be dismissed and, in addition, Northern Natural adopted the evidence presented by Minneapolis and Northern States as further evidence of why its application should not be dismissed.

At the hearing, counsel for Minneapolis and Northern States stated their respective companies had reached an agreement whereby Minneapolis would sell gas to Northern States for use by Northern States on an interruptible basis in the Black Dog generating plant in lieu of the proposed sale by Northern Natural to Northern States. As testified to by a witness for Minneapolis and a witness for Northern States and as shown by Exhibit RE–15 this contract[1] provides that Minneapolis will sell gas to Northern States on an interruptible basis for a five-year period at a price of four-tenths of one cent above Northern Natural's effective commodity rate. The contract further provides that Northern States will purchase a minimum of ten billion cubic feet of gas a year for the first three years of the contract and a minimum of six billion cubic feet per year for the remaining term of the contract. The delivery of gas by Minneapolis to Northern States will be made at the Black Dog Station, although the gas wil be measured for the convenience of both parties at Northern Natural's Cedar Avenue Station, 1.42 miles away.

At the close of the hearing, Northern Natural moved to further amend its application to conform to the proof by requesting that the present petition which requested that the certificate issued in Docket No. G–2409 be amended to provide that the facilities therein authorized for a direct sale now be authorized to provide for the jurisdictional sale of gas to Northern States be further amended to provide that such facilities now be authorized for use to provide for the jurisdictional sale of gas to Minneapolis so that Minneapolis may resell the gas to Northern States for use in its Black Dog Station. All of the interveners except the Coal Interests support on this record the certification which Northern Natural here seeks. Northern Natural's motion to amend its application to conform to the evidence of record was approved (Tr. RE–313).

The effect of the granting of Northern Natural's motion is to now present

[1] On the date of the hearing the agreement had not been reduced to writing although the terms thereof had been agreed upon (Tr. RE–313). The formal agreement was dated September 27, 1962, and forwarded to the Examiner and to the Secretary of the Commission on September 28, 1962, as a part of the official record in this matter (Tr. RE–314) and is so received in accordance with the directions of the Examiner during the hearing (Tr. RE–314). Although no hearing exhibit number was reserved for it, one was requested at Tr. RE–313, lines 10–11, it has been identified and marked as Exhibit RE–15 and so received.

for decision a request by Northern Natural to render jurisdictional sales to Minneapolis for resale to Northern States for use at the Black Dog Station. Since Minneapolis is a jurisdictional customer of Northern Natural, the same as Northern States, and since Minneapolis will purchase gas from Northern Natural for resale to Northern States pursuant to Northern Natural's applicable rate schedules, the same as Northern States would have done, all of the evidence presented by Northern Natural as respects this sale is as equally applicable to Minneapolis as it was to Northern States.

The jurisdictional sale of gas by Northern Natural as here proposed will produce substantial benefits (Tr. RE–264–265) accruing not only to Northern Natural and its customers by reason of the additional net revenues generated which will be available in defraying the costs of serving the firm requirements of its utility customers, but also to Minneapolis and its consumers by reason of the increase in the Minneapolis load factor.

The evidence of record indicates the revenues from the sale of gas to Minneapolis, as now proposed, will recoup all the costs of making the sale and in addition make a contribution to system-fixed costs of $734,000 (Ex. RE–5; Item RE–L; Tr. RE–265). This contribution to system-wide fixed costs will result in a corresponding reduction in the cost of gas to firm and small volume as well as to other consumers on the Northern Natural system.

Further, the evidence of record indicates the domestic consumers served by Minneapolis will benefit. At the present time Minneapolis has an authorized contract demand of 286,000 Mcf and has requested of Northern Natural an increase in its contract demand to 300,500 Mcf effective October 27, 1963 (Ex. 14, Tr. 261–2). Since these volumes are primarily for space heating customers, Minneapolis has sufficient quantities of valley gas (periods of low delivery) available within its contract demand to adequately serve the requirements of the Black Dog Station during those months when the space heating customers are not using their maximum quantities of gas. Therefore, Minneapolis can deliver gas to the Black Dog Station entirely within its contract demand volumes, without purchasing any overrun gas from Northern Natural (Ex. RE–13; Tr. RE–260–262). It is therefore determined this sale by Minneapolis will increase its present load factor of 60.5 per cent (Tr. 260, lines 16–17) which, when coupled with the profit margin of four-tenths of one cent, will necessarily benefit the domestic consumers served by Minneapolis.

The Coal Interests, in opposing Northern Natural's request contend there is an abundance of coal readily obtainable at reasonable cost to satisfy all of the fuel needs of the Black Dog Station and that the grant of the authorization herein requested would be detrimental to their interests.

A determination that the use of natural gas as here proposed should be permitted requires a positive showing of public convenience and necessity. (*Mississippi River Fuel Corp.*, 12 FPC 109, 112, 1953; *F.P.C.* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 30–31.) In making this determination many and diverse elements are to be considered among which are the gas supply, the estimated cost of the facilities, the demand for gas by the purchaser, the impact of the sale on coal producing areas and the benefits to the customers of Minneapolis as well as to the customers of Northern Natural.

There is no issue here as to gas supply, nor as to the ability of Northern Natural and Minneapolis to provide the gas to be sold, nor are there any additional facilities to be constructed. The record contains no evidence indicating the Coal

Interests will lose any sales already being made. The price at which Minneapolis will purchase gas from Northern Natural is not in issue since the schedules under which the sale will be made have heretofore been approved by the Commission in Docket No. G–19040 *et al.* (Items K and L). The benefits to Northern Natural, its customers and to Minneapolis and its customers have hereinabove been noted.

The record is clear that both Northern Natural and Minneapolis will effect economies in their operation by reason of this sale, which will be passed on to their customers. The certificate of public convenience and necessity is therefore found to be in the public interest and should be amended as requested.

FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, the evidence adduced, it is found and concluded that:

(1) The Northern Natural Gas Company is a Delaware Corporation with its principal place of business located at Omaha, Nebraska. It is a "natural gas company" within the terms of the Natural Gas Act as has heretofore been determined by this Commission, *In the Matter of Northern Natural Gas Company*, 1943, Docket No. G–280, 3 FPC 967.

(2) The facilities, as more fully described in the petition, will henceforth be used and operated both for the transportation of natural gas in interstate commerce and for the sale for resale of natural gas in interstate commerce subject to the jurisdiction of this Commission and the operation thereof is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Northern Natural is able and willing properly to do the acts and perform the service proposed to be rendered to Minneapolis Gas Company and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of this Commission promulgated thereunder.

(4) The evidence of record, as supplemented by that presented by Northern Natural, Minneapolis Gas Company and Northern States Power Company, clearly shows Northern Natural's request to make jurisdictional sales for ultimate use in Northern States Black Dog Lake Generating Station should not be dismissed.

(5) The certificate of public convenience and necessity issued to Northern Natural on June 30, 1956 in Docket No. G–2409, 15 FPC 1634, should now be amended to provide that the facilities therein authorized, constructed and utilized pursuant to such certificate now be authorized for use by Northern Natural to provide resale town border delivery service to the Minneapolis Gas Company who will then purchase natural gas through such facilities from Northern Natural for resale to Northern States Power Company for use on an interruptible basis in its Black Dog Electric Generating Station.

(6) Such Amendment is required by the present and future public convenience and necessity and an order should issue authorizing such Amendment.

Wherefore, it is ordered, subject to review by the Commission on appeal, or review by the Commission on its own motion, as provided in its Rules of Practice and Procedure that:

(A) The certificate of public convenience and necessity issued to Northern on June 30, 1956, in Docket No. G–2409, 15 FPC 1634 is hereby amended to provide that the facilities therein authorized, constructed and utilized pursuant to such certificate now be authorized for use by Northern Natural to provide resale town border delivery service to Minneapolis Gas Company who will purchase gas from Northern Natural through such facilities for resale to the Northern States

Power Company for use on an interruptible basis in its Black Dog Electric Generating Station.

(B) Except as herein amended all other terms and conditions of the certificate of public convenience and necessity issued to Northern Natural in Docket No. G–2409 on June 30, 1956, 15 FPC 1634, shall remain in full force and effect.

HARRY W. FRAZEE,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PENNSYLVANIA POWER & LIGHT COMPANY, PROJECT NO. 487

ORDER DETERMINING NET CHANGE IN ACTUAL LEGITIMATE ORIGINAL PROJECT COST; ACCRUED DEPRECIATION; AND PRESCRIBING ACCOUNTING THEREFOR

(Issued May 20, 1963)

Pennsylvania Power & Light Company, Licensee for Project No. 487,[1] from time to time filed statements, pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming for the period from January 1, 1957 through December 31, 1959 project additions and retirements resulting in (1) a $2,495,402.74 net increase in project cost over the previously determined amount of actual legitimate original cost of the project, $11,106,064.21 as of December 31, 1956,[2] and (2) a total claimed actual legitimate original cost of the project as of December 31, 1959 of $13,601,466.95. The claimed net increase of $2,495,402.74 results from claimed and recorded project gross additions and gross retirements of $3,293,203.25 and $797,800.51, respectively, as more specifically shown in the attached schedule.

Licensee also from time to time recorded upon its books of account changes in its reserve for accrued depreciation applicable to in-service project properties for the period from January 1, 1957 through December 31, 1959, resulting in a net reduction of $342,119.84 in the previously determined amount of accrued depreciation applicable to the project of $2,140,413.91 as of December 31, 1956,[3] as more specifically shown in the attached schedule. The resulting total claimed project depreciation reserve is $1,798,294.07 as of December 31, 1959.

The Commission's staff made a field examination of the books and records of Licensee and other data for the purpose of ascertaining the correctness of the above claimed and recorded project cost and project depreciation changes for the period from January 1, 1957 to December 31, 1959, inclusive.

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[1] The project is located on the Wallenpaupack Creek in Wayne and Pike Counties, Pennsylvania, and may be described as Licensee's Wallenpaupack Project. The license (issued pursuant to Section 4(d) of The Federal Water Power Act), authorizing the construction, operation, and maintenance of the project, is by its terms effective for a period of 50 years, commencing April 1, 1924.

[2] See Commission order issued December 28, 1960 (24 FPC 1197).

[3] *Ibid.*

Following that examination, an agreement, subject to Commission approval, was reached between the staff and representatives of Licensee with respect to certain proposed adjustments for the period from January 1, 1957 through December 31, 1959 consisting of: (1) the reclassification of a number of items totaling $69,806.87 within project plant accounts; (2) the addition to claimed and recorded project cost changes of the net amount of $72,869.56; (3) an increase in claimed and recorded project depreciation reserve in the net amount of $42,076.85; and (4) the accounting disposition of the foregoing amounts.

The proposed reclassifications totaling $69,806.87 within project plant accounts consist of the following net amounts by accounts:

Account[1]	Amount Debit or () credit
Hydraulic production plant:	
321 Structures and improvements	$65,419.70
322 Reservoirs, dams and waterways	(66,977.88)
323 Water wheels, turbines, and generators	179.71
Distribution plant:	
351 Structures and improvements	658.75
352 Station equipment	1,145.63
354 Poles, towers, and fixtures	(471.86)
355 Overhead conductors and devices	(7.78)
358 Line transformers	53.73
Net	0

[1] Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts for Public Utilities and Licensees effective prior to January 1, 1961. This reflects the fact that the project cost and project accrued depreciation herein determined are recorded in Licensee's accounts as of dates prior to January 1, 1961.

The proposed net addition of $72,869.56 to claimed and recorded changes in project cost is comprised of the following items:

	Amount Debit or () credit
Restore duplicated credits to plant	102.49
Exclude duplicated charges to plant	(22,308.70)
Restore duplicated credit	95,405.92
Unrecorded retirement	(330.15)
Total	72,869.56

The proposed net increase of $42,076.85 in Licensee's claimed and recorded project depreciation reserve arises from the need to correct for a deficiency in depreciation accruals for the years 1957 and 1958 in the credit amount of $42,407 and the disposition of an unrecorded retirement during 1959 in the debit amount of $330.15. In February 1961, subsequent to the period covered in the staff's field examination referred to above, Licensee recorded a journal entry correcting the deficiency of $42,407 in the project reserve for depreciation by a transfer of a like credit amount from non-project reserve for depreciation.

The proposed accounting disposition of all amounts involved in the proposed adjustments is shown by the following composite journal entry:

Account No.	Title	Debit	Credit
100.1	Electric plant in service, Project No. 487	$72,869.56	
100.3	Construction work in progress	22,307.16	
144.1	Retirement work in progress		$95,405.92
250.1	Reserve for depreciation of electric plant in service, Project No. 487	330.15	
538	Miscellaneous income deductions		100.95

On December 31, 1960, which was subsequent to the period covered by the staff's afore-mentioned field examination, Licensee disposed of certain proposed adjustments to project plant costs by recording in its books of account the following journal entry:

Account No.	Title	Debit	Credit
100.1	Electric plant in service, Project No. 487	$73,199.71	
100.3	Construction work in progress	22,307.16	
144.1	Retirement work in progress (cleared to Account No. 250.1, reserve for depreciation of electric plant in service, Project No. 487)		$95,405.92
271	Earned surplus		100.95

Accordingly, only the following journal entry is currently required to bring Licensee's recorded project cost and recorded depreciation reserve applicable to the in-service project properties into agreement with the project cost and the project depreciation reserve, as of December 31, 1959, as tentatively agreed to by the staff and Licensee's representatives:

Account No.	Title	Debit	Credit
250.1	Reserve for depreciation of electric plant in service, Project No. 487	$330.15	
100.1	Electric plant in service, Project No. 487		$330.15

Based upon the proposed adjustments, the staff recommends and Licensee concurs, that the Commission determine: (1) the net increase or change in project cost for the period from January 1, 1957 through December 31, 1959 to be $2,568,272.30, comprised of gross additions of $3,270,997.04 less gross retirements of $702,724.74; (2) the actual legitimate original cost of the project as of December 31, 1959 to be $13,674,336.51, classified by primary plant accounts as shown in the attached schedule; and (3) the reserve for accrued depreciation of the project as of December 31, 1959 to be $1,840,370.92, classified by functional groups as shown in the attached schedule.

By letter dated May 3, 1961, Licensee confirmed its agreement with respect to the proposed adjustments, accounting dispositions, and resulting project costs and project depreciation reserve.

The Pennsylvania Public Utility Commission was advised by letter of this Commission dated November 17, 1961 of the proposed adjustments, including the accounting dispositions, the resulting project costs, and the resulting project depreciation reserve, all as recommended by this Commission's staff and agreed to by Licensee as set forth above. By letter dated November 27, 1961, that Commission indicated no objection to the foregoing.

The Commission finds:

(1) Licensee, by its tentative agreement to the proposed adjustments, including the accounting dispositions, the resulting project costs, and the resulting project depreciation reserve, and its letter dated May 3, 1961, and the Pennsylvania Public Utility Commission, by its letter dated November 27, 1961, have obviated the necessity for notice and opportunity to protest provided by Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments, including the accounting dispositions, as proposed by the staff and agreed to by the Licensee, are reasonable and appropriate for the purposes of the Federal Power Act, and, therefore, should be approved and directed as hereinafter provided.

(3) The net increase or change in the actual legitimate original cost of Project No. 487 for the period from January 1, 1957 through December 31, 1959 is $2,568,272.30, comprised of gross additions of $3,270,997.04 less gross retirements of $702,724.74, and the resulting actual legitimate original cost of the project as of December 31, 1959 is $13,674,336.51, classified by primary plant accounts as shown in the attached schedule.

(4) The reserve for accrued depreciation applicable to in-service project properties is $1,840,370.92 as of December 31, 1959, classified by functional groups as shown in the attached schedule.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments, including the accounting dispositions, as proposed by the staff and agreed to by the Licensee, are hereby approved and directed to be made by Licensee.

(C) Licensee, to the extent that it has not already done so, shall (a) establish and maintain control and detailed project plant accounts for Project No. 487 showing the debit amount of $2,568,272.30 as the net increase or change in the project cost for the period from January 1, 1957 through December 31, 1959, and the total debit balance of $13,674,336.51 as the actual legitimate original cost of the project as of December 31, 1959, all as more specifically shown in the attached schedule classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees effective prior to January 1, 1961; and (b) establish reserve for accrued depreciation applicable to in-service project properties showing the total credit balance of $1,840,370.92 as of December 31, 1959, classified by functional groups as shown in the attached schedule.

(D) Licensee shall within 90 days from the issuance of this order file with the Commission three certified copies of its adjusting journal entries showing compliance with this order.

PROJECT NO. 487 (WALLENPAUPACK) PENNSYLVANIA POWER & LIGHT COMPANY (LICENSEE)—

ACTUAL LEGITIMATE ORIGINAL COST BY PLANT ACCOUNTS AND RESERVE FOR DEPRECIATION BY FUNCTIONAL GROUPS

Account*		Allowed as of Dec. 31, 1956**	Changes from Jan. 1, 1957 to Dec. 31, 1959, inclusive			Allowed as of Dec. 31, 1959
No.	Title		As claimed	Adjustments	As adjusted	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Actual legitimate original cost					
	HYDRAULIC PRODUCTION PLANT					
320	Land and land rights	$2,499,524.85	$6,528.84		$6,528.84	$2,506,053.69
321	Structures and improvements	1,448,451.52	(70,163.80)	$67,257.12	(2,906.68)	1,445,544.84
322	Reservoirs, dams, and waterways	5,606,951.54	2,614,206.54	(72,902.80)	2,541,303.74	8,148,255.28
323	Water wheels, turbines, and generators	562,065.94	(52,014.96)	64,452.41	12,437.45	574,503.39
324	Accessory electric equipment	211,814.46	(5,326.86)	7,416.05	2,089.19	213,903.65
325	Miscellaneous power plant equipment	79,063.26	(208.80)	134.73	(74.07)	78,989.19
326	Roads, railroads, and bridges	156,991.79				156,991.79
	Total hydraulic production plant	10,564,863.36	2,493,020.96	66,357.51	2,559,378.47	13,124,241.83
	TRANSMISSION PLANT					
342	Structures and improvements	37,282.16	124.33		124.33	37,406.49
343	Station equipment	319,353.03	6,730.61		6,730.61	326,083.64
	Total transmission plant	356,635.19	6,854.94		6,854.94	363,490.13
	DISTRIBUTION PLANT					
351	Structures and improvements	88,652.80	(2,285.04)	1,687.67	(597.37)	88,055.43
352	Station equipment	75,950.15	(2,614.03)	5,250.29	2,636.26	78,586.41
354	Poles, towers, and fixtures		471.86	(471.86)		
355	Overhead conductors and devices		7.78	(7.78)		
358	Line transformers and devices		(53.73)	53.73		
	Total distribution plant	164,602.95	(4,473.16)	6,512.05	2,038.89	166,641.84
	GENERAL PLANT					
378	Communication equipment	19,962.71				19,962.71
	Total project plant	11,106,064.21	2,495,402.74	72,869.56	2,568,272.30	13,674,336.51

RESERVE FOR DEPRECIATION					
Hydraulic production plant	1,963,461.88	(371,160.83)	42,076.85	(329,083.98)	1,634,377.90
Transmission plant	112,014.47	18,632.45		18,632.45	130,646.92
Distribution plant	54,938.29	8,773.59		8,773.59	63,711.88
General plant	9,999.27	1,634.95		1,634.95	11,634.22
Total	2,140,413.91	(342,119.84)	42,076.85	(300,042.99)	1,840,370.92

( ) Denotes reduction.

*Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts for Public Utilities and Licensees effective prior to Jan. 1, 1961.

**See Commission order issued Dec. 28960, 1(24 FPC 1197).

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP62-161

ORDER DENYING PETITION TO REOPEN PROCEEDINGS

(Issued May 20, 1963)

On April 19, 1963, The Louisiana Public Service Commission, Louisiana Gas Service Company, and Hammond-Baton Rouge Brick Company (Petitioners) filed a Petition to Reopen in the above-styled proceeding. The Petition states that since the issuance of the Presiding Examiner's Initial Decision in this proceedings[1] "* * * it has come to the attention of the Louisiana Public Service Commission that" no off-shore-produced gas presently reaches the Florida Parishes. Petitioners aver that this alleged "* * * change in the factual situation occurring subsequent to the hearing now affords a clear basis for a determination that the Commission has no jurisdiction over any of United's sales for resales in the areas in question * * *." The Petition therefore requests that the proceeding be reopened for a determination of the facts concerning the flow of gas at the present time.

United and Wilmut Gas and Oil Company, and Commission Staff Counsel filed answers in opposition to the Petition in question. United states that offshore gas continues to flow intermittently to the Florida Parishes and has done so as recently as April of this year. Staff Counsel and Wilmut both contend that the Commission's jurisdiction over the sales involved does not rest necessarily upon the sale in part of offshore-produced gas, but arises out of other separate and distinct legal considerations.[2]

The Petitioners' mere allegations that a change in gas flow has come to their attention does not meet the requirements of Section 1.33 of the Commission's Rules of Practice and Procedure providing that petitions to reopen "shall set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including the material changes of fact or of law alleged to have occurred since the conclusion of the hearing * * *." Petitioners have presented no factual support for their contentions, nor have they demonstrated any basis for questioning the statements set forth in United's answer to the Petition. Accordingly, we find that good cause has not been shown for reopening the present proceeding at this time.

The Commission orders:

The Petition to Reopen filed April 19, 1963 in the above-styled proceeding is hereby denied.

Commissioners O'Connor and Woodward *not participating.*

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[1] Issued February 25, 1963.

[2] The briefs filed by Staff Counsel and Wilmut in this proceeding both argued for Commission jurisdiction over the sales in question on other grounds in addition to the presence of offshore-gas.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP63-239

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued May 20, 1963)

On February 25, 1963, United Gas Pipe Line Company (Applicant) filed in Docket No. CP63-239 an application pursuant to Section 7(b) of the Natural Gas Act for authority to abandon and remove the following described facilities:

A positive meter and regulator station and appurtenant facilities serving Wesley West, located Milepost 2.54 on the Goodrich-Port Arthur 18" line in the A, Viesca League, Abstract 77, Polk County, Texas.

Applicant states that it has been selling gas to this customer for use in its lease operations in Polk County, Texas but the contract for such service terminated on March 1, 1963 in accordance with the contract terms of a letter agreement dated January 25, 1963. No other customer is being served by use of the said facilities.

Applicant proposes to remove the facilities from the present site and use them elsewhere in its operations when required.

Pursuant to due notice, a public hearing was held in Washington, D.C., on May 9, 1963, respecting the matters involved in and the issues presented by the application. No petition to intervene or protest to the granting of the application has been received. Staff Counsel moved orally at the hearing that the intermediate decision procedure be omitted and the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a natural gas company within the meaning of the Natural Gas Act and the facilities above described are a part of the Applicant's interstate pipeline system and subject to the jurisdiction of the Commission.

(2) The contract for gas service through the facilities described, expired on March 1, 1963, and the only customer served with gas notified Applicant that it did not desire any further service as per letter agreement dated January 25, 1963 (Exhibit X-1) of the application. Therefore the public convenience and necessity does not require the maintenance or operation of the facilities heretofore utilized in rendering the service.

(3) The dismantling and removal of these facilities from their present site for salvage or other uses will not affect public convenience and necessity.

(4) A request made during the public hearing by Staff Counsel for the omission of the intermediate decision procedure under Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure was unopposed by any party of record, and not having been denied by the Commission is granted pursuant to Section 1.30(c)(1) of the said rules.

The Commission orders:

(A) Applicant be and is hereby permitted to abandon, dismantle and remove the facilities heretofore described, as more fully described in the application.

(B) Applicant shall advise the Commission of the date of removal of the facilities within 10 days thereafter.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221; TEXACO INC., ET AL., DOCKETS NOS. CI61-1416, CI61-1420, CI61-1438, CI63-449, CI63-756

ORDER DENYING APPLICATION FOR REHEARING

(Issued May 21, 1963)

On April 24, 1963, Texaco Inc. (Texaco) filed an application for rehearing of the Commission order of March 25, 1963 granting intervention to Long Island Lighting Company (LILCO) and Joint Consolidated Gas System Petitioners (Consolidated) in the above-referenced Texaco dockets. Texaco alleged that LILCO's claimed interest in the "consolidated proceedings" in which it was permitted to intervene "was bottomed on the fact that it purchased gas directly or indirectly from certain named pipelines and had an interest in the prices paid for gas by those pipelines." Texaco noted that LILCO's petition referred specifically to the cost of gas to "Transco, Tennessee, UGPL and Texas Gas" and that LILCO had therefore shown no interest in sales by Texaco to Florida Gas Transmission Company (Florida Gas) or to United Fuel Gas Company (United Fuel Gas), the purchasing pipelines in the above-referenced Texaco dockets. Texaco similarly asserted that Consolidated had failed to show interest in any pipelines other than "Tennessee, Transco, United Gas, Texas Gas and Trunkline." Therefore, it, too, had failed to demonstrate an interest in sales to Florida Gas or to United Fuel Gas.

Under the particular circumstances involved in these matters, we cannot find that LILCO and Consolidated have failed to demonstrate a sufficient interest to entitle them to be permitted to intervene in the above-referenced Texaco dockets. The price paid by any given pipeline in a production area, under the area pricing concept now considered by the Commission, may well affect the ultimate price to be paid by the distribution company from another pipeline making purchases in that area. This is particularly true in these consolidated proceedings which involve virtually all of the certificate applications now pending before the Commission for the sale of gas from southern Louisiana.

In view of these circumstances we must deny Texaco's application for rehearing.

The Commission orders:

The Application for Rehearing of the Commission order of March 25, 1963, filed by Texaco Inc. on April 24, 1963 is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

INTERSTATE POWER COMPANY, DOCKET NO. E-7086

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS AND COMMON STOCK

(Issued May 22, 1963)

By order issued May 2, 1963, *supra*, p. 880, in the above-entitled matter, the Commission authorized Interstate Power Company (Applicant) to issue and

sell at competitive bidding $6,000,000, principal amount of First Mortgage Bonds and to issue and sell 154,194 (maximum) shares of Common Stock, par value $3.50 per share, subject to the provisions, among others set forth in Paragraph (B) of that order, as follows:

(B) The proposed issuance and sale of Bonds at competitive bidding and the proposed issuance and sale of Common Stock in the manner set forth in the application shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(k)(3) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(k)(4) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof, the price per share to be received by Applicant for the Common Stock, and the amount of any compensation for underwriters to be paid by Applicant in connection with the Common Stock.

Applicant, on May 22, 1963, filed an amendment, pursuant to the requirements of the aforementioned Commission order, in which it states, among other things, (1) that it proposes to accept, as representing the lowest annual cost of money to it, the bid of Salomon Bros. & Hutzler, to purchase the proposed issuance of $6,000,000, principal amount of Bonds, at the price of 99.062% of principal amount, with an interest rate of 4⅜% per annum; and, (2) that it proposes to accept, as representing the lowest commitment fee, the bid of White Weld & Co. to receive $10,483.52, aggregate amount of compensation for commitment to purchase the Common Stock unsubscribed for by stockholders.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements contained in Paragraph (B) of the Commission's order issued May 2, 1963, in the above-entitled docket; and under the respective bids it proposes to accept for the issuance of Bonds and Common Stock, (a) the price to be received by Applicant for the Bonds and the interest rate thereof are reasonable; and (b) the price per share to be received by Applicant for the Common Stock is reasonable, and the compensation to be paid to the underwriter under the bid Applicant proposes to accept for underwriting the proposed issuance of Common Stock is reasonable.

(2) The proposed issuance and sale of Bonds and Common Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The price to be received by Applicant for the proposed Bonds and the interest rate thereof, and the price per share to be received by Applicant for the proposed issuance of Common Stock and the compensation to be paid to the underwriter for underwriting the issuance of that Common Stock, under the respective bids referred to above, are approved as reasonable.

(B) The proposed issuance and sale of Bonds and Common Stock referred to above, upon the terms and conditions, and for the purposes specified in the

application, as supplemented by the amendment referred to above, are hereby authorized, subject only to the provisions of Paragraphs (C), (D) and (E) of the Commission's order issued May 2, 1963, in the above docket.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

GEORGE W. GRAHAM, INC. (OPERATOR), ET AL., DOCKET NOS. G–16661, G–19740, RI61–157, RI62–171; GEORGE W. GRAHAM (OPERATOR), ET AL.; GEORGE W. GRAHAM, INC., DOCKET NO. RI63–432; TENNECO OIL COMPANY (OPERATOR), ET AL., DOCKET NOS. G–13742, G–17152, G–19927, RI61–267, RI62–125

ORDER ACCEPTING OFFER OF SETTLEMENT, TERMINATING PROCEEDINGS AND PARTIALLY TERMINATING PROCEEDINGS

(Issued May 24, 1963)

On April 24, 1963, George W. Graham (Operator), *et al.* (Graham) tendered for filing a notice of change in its presently effective FPC Gas Rate Schedule No. 2, for the jurisdictional sale of natural gas to Texas Eastern Transmission Corporation (Texas Eastern) from the West Holly Field, De Witt County, Texas (Railroad Commission District No. 2). Graham has requested that the proposed rate increase, from the presently effective rate of 11,72992 cents per Mcf at 14.65 psia to 13.8733 cents per Mcf including present tax reimbursement,[1] be made effective June 1, 1963.

Concurrently with the filing of the proposed increased rate, Graham filed an Offer of Settlement to settle the issues raised by its rate filing. Under the terms of the offer the price redetermination clause and the favored nation provision and the annual escalation provisions will be deleted from the contract and a revised schedule of 0.5 cent per Mcf escalations, at five year intervals beginning February 5, 1963, is to be substituted for the existing escalation provisions. The notice of change in rate to 13.8733 cents per Mcf and the executed contract amendment relating to the proposed Offer of Settlement have been designated as Supplement No. 7 to Graham's FPC Gas Rate Schedule No. 2.

Graham in its Offer of Settlement also proposes to settle the proceedings listed in Appendix A hereto. The subject dockets relate to rate proceedings under Section 4(e) of the Act arising from proposed increased rates tendered by George W. Graham, Inc. (Operator), *et al.* (Graham) and George W. Graham, Inc. (Graham) under their FPC Gas Rate Schedule Nos. 1 and 5 respectively, for the jurisdictional sale of gas to Texas Eastern from Neuces County and Aransas County, Texas (Railroad Commission District No. 4). The proposed increased rates were suspended and subsequently placed into effect subject to refund except in Docket No. RI63–432.

In its Offer of Settlement, Graham states that if it is permitted to charge and collect, effective the date of issuance of this order, a rate of 15.0 cents per Mcf, including present tax reimbursement, under its FPC Gas Rate Schedule Nos. 1 and 5, and if the rate suspension proceedings related to these rate schedules are terminated, then Graham will eliminate the favored-nation, price redetermination, and annual escalation provisions. Graham also agrees to refund all

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[1] Wellhead delivery—all gas is gathered via Wilcox Trend Gathering System, Inc. (assignor of Texas Eastern), and is dehydrated at the Goliad Plant in Lavaca County, Texas.

amounts, plus applicable interest, collected in excess of the proposed settlement rate in Docket No. RI62–171.

The interests of Graham which are now covered under its FPC Gas Rate Schedule No. 5 were at one time covered under Tenneco Oil Company (Operator), *et al.* FPC gas Rate Schedule No. 5. Suspension proceedings in Docket Nos. G–13742, G–17152, G–19927, RI61–267, and RI62–125 are related to increased rates under Tenneco's FPC Gas Rate Schedule No. 5 during the period of time that Graham's interests were covered thereunder.[2] Although Graham does not specifically relate its Offer of Settlement to the above proceedings, in view of the nature of the offer the terms are deemed to be applicable to such proceedings insofar as they relate to Graham's interest. Accordingly, we shall require Graham to refund with interest those amounts collected in excess of the 15.0 cents per Mcf settlement rate applicable to Graham's interest in Docket No. RI62–125. Docket No. RI62–125 is the only proceeding in which an increased rate above 15.0 cents per Mcf is in effect subject to refund. Similarly, we shall terminate the proceedings mentioned above involving Tenneco insofar as they relate to Graham's interests.

Texas Eastern has concurred in the Offer of Settlement and has agreed in the event the offer is accepted by the Commission, to make the contract changes and amendments provided in the offer. No objections to the proposed settlement have been received from interveners or other interested parties.

Since the proposed settlement rates are acceptable under the provisions of the Second Amendment of the Commission's Statement of General Policy No. 61–1, 24 FPC 1107, the public interest will best be served by accepting Graham's proposed Offer of Settlement.

However, we desire to make it clear that acceptance of this Offer of Settlement shall not be construed as approval of any future increased rates proposed by Graham.

The Commission finds:

The proposed settlement of the issues raised by the proposed increased rate filing, and the settlement of the subject proceedings on the basis described herein, as more fully set forth in Graham's April 24, 1963, Offer of Settlement is in the public interest and is appropriate to carry out the provisions of the Natural Gas Act and should be approved by the Commission and made effective as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by Graham on April 24, 1963, is hereby approved in accordance with the provisions of this order.

(B) Graham shall file within 30 days from the date of issuance of this order contractual amendments to its FPC Gas Rate Schedule Nos. 1 and 5, which Graham shall execute with Texas Eastern in conformity with Graham's Ofier of Settlement in all respects. The contractual amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Within 45 days from the date of issuance of this order, Graham shall refund to Texas Eastern all amounts collected in Docket Nos. RI62–171 and RI62–125, as heretofore explained, in excess of 15.0 cents per Mcf, including tax reimbursement, together with simple interest at the rate of 7 percent per annum from the date of receipt of the excess amounts to the date of refund. Graham shall bear all costs incidental to the making of refunds.

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[2] The pertinent details relating to these proceedings are set forth in Appendix B hereof.

(D) Within 60 days from the date of issuance of this order, Graham shall report to the Commission in writing and under oath the details of its calculations resulting in refunds ordered pursuant to paragraph (D) above, together with a copy of release from Texas Eastern with respect to such refunds.

(E) Upon notification by the Secretary that Graham has complied with the terms and conditions of this order, the rate and charge of 15.0 cents per Mcf, including present tax reimbursement, under Graham's FCC Gas Rate Schedule Nos. 1 and 5, respectively, as specified in the Offer of Settlement and Supplement No. 7 to Graham's FPC Gas Rate Schedule No. 2 shall be effective as of the date of issuance of this order and the proceedings listed in Appendix A hereto shall be deemed terminated, and Graham's refund obligation with respect to these proceedings shall be deemed to be discharged, and the proceedings listed in Appendix B hereof shall be deemed terminated insofar as they relate to Graham's interests and the refund obligations with respect to Grahams' interests shall be deemed to be discharged with respect to such proceedings.

(F) The acceptance of the Offer of Settlement is without prejudice to any findings or determination that may be made in any proceedings which are presently being heard, or in any proceedings now pending, or hereinafter instituted by or against Graham.

APPENDIX A

Docket No.	FPC Gas Rate Schedule No.	Supp. No.	Texas R.R. Comm. No.	Susp. rate (14.65 psia)	Date effect. subj. to ref.	Settle. rate (14.65 psia)
G-16661	1	7	4	14.6	Aug. 11, 1959	15.0
G-19740	1	8	4	14.8	Apr. 1, 1960	15.0
RI61-157	1	10	4	15.0	Apr. 1, 1961	15.0
RI62-171	1	11	4	15.2	Apr. 16, 1962	15.0
RI63-432	5	5	4	15.0	(*)	15.0

*Suspended until Oct. 24, 1963, by Commission order issued May 22, 1963.

APPENDIX B

Docket No.	FPC Gas Rate Schedule No.	Supp. No.	Texas R.R. Comm. No.	Susp. rate (14.65 psia)	Date effect. subj. to ref.	Settle. rate (14.65 psia)
G-13742	5	4	4	14.4	June 10, 1958	14.6
G-17152	5	5	4	14.6	June 3, 1959	14.6
G-19927	5	6	4	14.8	Apr. 6, 1960	14.6
RI61-267	5	7	4	15.0	May 12, 1961	14.6
RI62-125	5	8	4	15.2	Apr. 1, 1962	14.6

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SOUTH CAROLINA ELECTRIC & GAS COMPANY, DOCKET NO. E-6468

ORDER DENYING APPLICATION FOR REHEARING AND REQUEST FOR STAY

(Issued May 24, 1963)

On April 26, 1963, South Carolina Electric & Gas Company (Company) filed an application for rehearing of the Commission's Opinion No. 384 and accompanying order issued March 28, 1963, 29 FPC 624, in this proceeding. The Company urges primarily the same arguments advanced in its brief and

exceptions and previously rejected by the examiner's decision and our Opinion. New matter presented is unsubstantial. After full consideration of the application for rehearing, we conclude that the arguments therein justify no change or modification in the said Opinion and that the application should be denied.

The Commission further finds:

The assignments of error and grounds for rehearing set forth in the application for rehearing filed by the Company on April 26, 1963, of the Commission's Opinion No. 384 and accompanying order issued herein on March 28, 1963, present no facts or principles of law which were not considered by the Commission when it issued its aforesaid Opinion, or which having now been considered warrant any change in or modification of the said Opinion and order. Further, no grounds exist for a stay of the aforesaid Opinion and order.

The Commission orders:

South Carolina Electric & Gas Company's application filed on April 26, 1963, for rehearing of the Commission's Opinion No. 384 and accompanying order issued herein on March 28, 1963, and its request for a stay thereof, are denied.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SOUTH CAROLINA ELECTRIC & GAS COMPANY AND SOUTH CAROLINA GENERATING COMPANY, DOCKET NO. E-7085

ORDER AUTHORIZING DISPOSITION, ACQUISITION AND MERGER OR CONSOLIDATION OF FACILITIES

(Issued May 24, 1963)

South Carolina Electric & Gas Company (Electric & Gas) and South Carolina Generating Company (Generating Company), a wholly-owned subsidiary of Electric & Gas, filed a joint application on March 15, 1963 for an order, pursuant to Section 203 of the Federal Power Act, authorizing Generating Company to dispose of and Electric & Gas to acquire all the electric facilities of Generating Company. Each applicant is incorporated under the laws of the State of South Carolina and each has its principal place of busines at Columbia, South Carolina. Electric & Gas is authorized to do business as a foreign corporation in the State of Georgia.

Electric & Gas is engaged in the generation, purchase, transmission, distribution, and sale of electric power and energy and furnishes wholesale and retail electric service in the central, southern, and southwestern sections of South Carolina, including the cities of Charleston and Columbia. The service territory of Electric & Gas comprises approximately 40% of the geographical area of South Carolina and has an estimated total population of 750,000. All electric generating plants owned and operated by Electric & Gas are located in South Carolina except the Stevens Creek hydroelectric plant which is situated on the Georgia side of the Savannah River. Electric & Gas also supplies natural gas to the public in Charleston and Columbia, South Carolina, and in certain other communities in its above-mentioned service area[1] and conducts bus operations in Charleston and Columbia. Electric & Gas had net utility plant of $197,852,000

[1] The natural gas requirements of Electric & Gas are supplied by its other wholly-owned subsidiary, South Carolina Natural Gas Company, which operates in South Carolina.

as of December 31, 1962 and it received total operating revenues of $63,353,000 in the calendar year 1962.

Generating Company is engaged in the electric utility business in South Carolina. It owns and operates Urquhart Station, a 250,000 kw steam-electric generating plant, consisting of two 75,000 kw and one 100,000 kw generating units, located at Beech Island, South Carolina, together with that plant's associated 325,000 kva 13.8 Kv/115 kv stepup substation and 0.23 miles of 115 kv transmission line extending from the substation to the Savannah River, where interconnection is made with the facilities of Georgia Power Company (Georgia Power). The electric power and energy produced at Urquhart Station is transmitted, distributed, and sold by Generating Company to three customers: E. I. duPont de Nemours (duPont), as agent for the Atomic Energy Commission's Savannah River Project, a retail customer, and Electric & Gas and Georgia Power, both wholesale customers. Each of Generating Company's customers is served under a long-term contract. Generating Company had net utility plant of $32,630,000 as of December 31, 1962 and it received total operating revenues of $9,620,000 in the calendar year 1962.

The electric facilities of the applicants are interconnected and their combined system also has interconnections with other electric utilities which operate in the States of South Carolina, North Carolina, and Georgia. According to the application, the facilities of Generating Company will be integrated with those of Electric & Gas upon consummation of the proposed transaction.

The proposed transaction will be carried out in accordance with the provisions of an agreement dated March 1, 1963 between Electric & Gas and Generating Company which was filed as a part of the application. That agreement and information otherwise contained in the application indicate that Generating Company proposes to convey, transfer, and deliver to Electric & Gas and that Electric & Gas proposes to acquire all the electric facilities, rights, and other assets of Generating Company; that Electric & Gas also proposes to assume all obligations and liabilities of Generating Company [2] and to surrender for cancellation all the outstanding capital stock of Generating Company; [3] and that Electric & Gas further proposes to enter into a contract with Georgia Power whereby Electric & Gas will supply wholesale electric service to Georgia Power in lieu of such service now being supplied by Generating Company to Georgia Power; all subject to the applicants' obtaining the requisite approvals of this Commission, of the holders of Generating Company's outstanding bonds and promissory notes, and of the trustee under Generating Company's mortgage indenture securing the payment of its bonds. The above-mentioned March 1, 1963 agreement between the applicants provides that upon the consummation of the proposed transaction, the corporate existence of Generating Company will be terminated.

As stated hereinabove, all assets and liabilities of Generating Company will be acquired and assumed by Electric & Gas. The electric plant of Generating Company is recorded on its books at original cost. On the books of Electric & Gas, as of the effective date of the proposed transaction, the same amounts for the acquired assets and other debits and for the assumed liabilities and other credits will be recorded as are recorded for those items on the books of Generating

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[2] Generating Company's outstanding liabilities include long-term debt consisting of First Mortgage Bonds, 3⅞% Series, due 1979, in the principal amount of $17,008,000, and 4% Series, due 1981, in the principal amount of $6,677,000, and 4% Promissory Notes, due 1964, in the principal amount of $155,500.

[3] Generating Company's outstanding capital stock is comprised of 505 shares of Common Stock without par value.

Company as of that date. Electric Plant (Organization Expenses) of $20,629 and Capital Stock Expense of $13,452 will be written off by Generating Company on its books by charges to its Account 216, Unappropriated Earned Surplus, prior to the effective date of the proposed transaction. Generating Company's total assests and other debits exceeded its total liabilities and other credits by $7,828,000 as of December 31, 1962 after giving effect to the afore-mentioned charges to surplus. The amount of Generating Company's assets, $7,828,000, is equivalent to the amount at which Electric & Gas' investment in Generating Company was recorded on Electric & Gas' books, all as of Deccember 31, 1962. The proposed transaction will not result in the creation of an acquisition adjustment on the books of Electric & Gas.

The applicants represent that the proposed transaction will have no effect upon existing contracts of Electric & Gas for the purchase, sale or interchange of electric power and energy except its contract for the purchase of power and energy from Generating Company which will be terminated inasmuch as Electric & Gas will acquire Generating Company's facilities and Generating Company will cease to exist as a corporate entity. The applicants further represent as follows with respect to the effect of the proposed transaction upon Generating Company's three aforementioned long-term contracts for the sale of electric power and energy: Electric & Gas will acquire the rights and assume the obligations of Generating Company under its contract with duPont. The contract between Generating Company and Electric & Gas will be terminated as set forth hereinabove. Electric & Gas and Georgia Power have agreed upon the provisions of a proposed contract for wholesale electric service by the former to the latter which would supersede the existing contract between Generating Company and Georgia Power.[4]

According to the application, the reasons underlying the formation of Generating Company as a separate entity to construct, own, and operate Urquhart Station no longer exist and the operations of Generating Company can now be conducted by Electric & Gas with resulting economies in effort and expense through elimination of separate record keeping, duplicate reporting, separate pension plans, and related administrative and regulatory matters. The proposed transaction will eliminate complex arrangements between the applicants for mutual use of their electric facilities and costly accounting therefor. The proposed acquistion of Generating Company's facilities by Electric & Gas will also make it possible for certain electric requirements of Georgia Power to be supplied from the entire electric system of Electric & Gas rather than from two units at Urquhart Station only as at present. In addition, the proposed transaction will facilitate and strengthen interconnections, interchange agreements, pooling arrangements, and operations in parallel among electric utilities serving the States of South Carolina, North Carolina, Georgia, and Virginia.

Written notice of the application has been given to the Public Service Commission of South Carolina and to the Governor of that State. Notice of the application was also published in the Federal Register on April 2, 1963 (28 F.R. 3189), stating that any person desiring to be heard or to make any protest with reference to the application should on or before April 15, 1963, file with

[4] By letter dated concurrently herewith from this Commission's Secretary to Electric & Gas, the proposed contract between Electric & Gas and Georgia Power, designated as Electric & Gas' Rate Schedule F.P.C. No. 11, has been accepted for filing as a rate schedule, pursuant to Section 205 of the Federal Power Act, to become effective as of the first day of the month following consummation of the proposed merger of Generating Company's facilities with those of Electric & Gas. Such rate schedule will supersede Generating Company's Rate Schedule F.P.C. No. 1 for wholesale electric service to Georgia Power.

the Federal Power Commission, Washington 25, D.C., petitions or protests. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Public Service Commission of South Carolina by order dated October 9, 1962 authorized Electric & Gas and Generating Company to consummate the proposed transaction in the manner as described above.

The Commission finds:

(1) Electric & Gas, a South Carolina corporation, owns and operates facilities for the transmission and sale at wholesale of electric energy which is transmitted between the States of Georgia and South Carolina and is consumed outside the State in which it is generated, all of which facilities are in addition to and do not include facilities used for the generation of electric energy or facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter. Electric & Gas is, therefore, a public utility within the meaning of that term as used in Section 203 of the Federal Power Act.

(2) Generating Company, a South Carolina corporation, owns and operates facilities for the transmission and sale at wholesale of electric energy which is generated in the State of South Carolina and consumed in the State of Georgia, all of which facilities are in addition to and do not include facilities used for the generation of electric energy or facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter. Generating Company is, therefore, a public utility within the meaning of that term as used in Section 203 of the Federal Power Act.

(3) By the proposed transaction, as described above, Generating Company will dispose of the whole of its facilities subject to the jurisdiction of the Commission, and Electric & Gas will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Generating Company, another person, all within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(4) The proposed disposition of its facilities by Generating Company, and the proposed acquistion and merger or consolidation of the facilities of Generating Company by Electric & Gas, all as described above, upon the terms and conditions specified in the application and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act for the reasons set forth above.

(5) Neither Electric & Gas nor Generating Company is subject to a requirement of the Public Utility Holding Company Act of 1935 or of a rule, regulation, or order thereunder, which would exempt them or either of them, pursuant to Section 318 of the Federal Power Act from the requirements of Section 203 thereof with respect to any matter with which this order is concerned.

(6) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed disposition of its facilities by Generating Company, and the proposed acquisition and merger or consolidation of the facilities of Generating Company by Electric & Gas, all as described above, are hereby authorized and approved upon the terms and conditions set forth in the application, subject to the provisions of this order.

(B) Electric & Gas and Generating Company shall record the transaction herein authorized and the facilities and properties described above as provided

in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

GEORGIA POWER COMPANY, DOCKET NO. E-7099

ORDER TO SHOW CAUSE*

(Issued May 27, 1963)

Georgia Power Company (Georgia Power), Atlanta, Georgia, a corporation organized under the laws of the State of Georgia, has been determined to be a public utility within the meaning of the Federal Power Act, 17 FPC 324, 326, and has filed with the Federal Power Commission, from time to time, rate schedules and contracts for service to rural electric cooperatives and municipalities, including those listed in the attached Appendices A, B, and C. These rate schedules and contracts contain one or more provisions which may have the effect of restricting the rural electric cooperatives and municipalities from reselling to certain classes of potential customers power purchased from Georgia Power under the filed rate schedules and contracts.

The following provisions which appear to be restrictive are contained in rate schedules on file with the Commission, as designated below:

1. Contract for Service Under Rate Schedule "WR-2" Optional (Primary Electric Service for Rural Cooperative Associations):

FOURTH

Additional Charge for Service Resold to Large Loads: For service resold by the Customer to any single load of 50 HP or more, there is an additional charge of $1.11 gross per KW of maximum demand of such load as recorded each month * * *

FIFTH

The Customer further agrees to notify the Company promptly in writing of its intention to serve any customer having a connected load of 50 HP or more, and further agrees to install a demand meter or demand attachment in conjunction with Customer's watthour meter installed to measure said load, and further agrees to read such demand meter monthly and to furnish such reading promptly to the Company, in order that the Company may render its bill in accordance with the terms of Schedule "WR-2"

ELEVENTH

Neither party, unless ordered so to do by a properly constituted state regulatory authority, shall duplicate the other's facilities, except insofar as such duplication shall be necessary in order to transmit electric energy between unconnected points on its lines. Neither party unless ordered so to do by a properly constituted state regulatory authority, shall distribute or furnish electrical energy to anyone who, at the time of the proposed service,

*Amended July 15, 1963, 30 FPC 197.

is receiving electric service from the other, or whose premises are capable of being served by the existing facilities of the other without extension of its distribution system. The Customer shall not sell the energy purchased from the Company hereunder to any person, firm, corporation, association, or to anyone for resale, except with the written consent of the Company.

The above provisions of the "WR–2" rate are contained in the designated rate schedules on file with the Commission as listed in Appendix A.

2. Rate Schedule "WR–5" Optional (Wholesale Service to Rural Cooperative Associations for Redistribution and Resale):

APPLICABILITY: * * * This schedule shall not be applicable to service resold to a customer having a demand of 100 KW or more at a rate lower than the standard rate of the Company as prescribed by the Georgia Public Service Commission for that class of service.

Contract for Primary Electric Service for Rural Cooperative Associations Under "WR–5" Rate:

ELEVENTH

Neither party, unless ordered so to do by a properly constituted state regulatory authority, shall duplicate the other's facilities, except insofar as such duplication shall be necessary in order to transmit electrical energy between unconnected points on its lines. Neither party, unless ordered so to do by a properly constituted state regulatory authority, shall distribute or furnish electrical energy to anyone who, at the time of the proposed service, is receiving electric service from the other, or whose premises are capable of being served by the existing facilities of the other without extension of its distribution system; provided, however, the Company shall have the right to serve direct any unserved or new customer, having a demand of 100 kilowatts or more, when Company is requested to do so by such customer. The customer shall not sell the energy purchased from the Company hereunder to any person, firm, corporation, association, or to anyone for resale, except with the written consent of the Company.

The above provisions of the "WR–5" rate schedule and contract are contained in the designated rate schedules on file with the Commission as listed in Appendix B.

3. Contract for Primary Electric Service Under Rate Schedule "WR–4" (Wholesale Service to Municipalities for Redistribution and Resale):

FIRST

* * * The Company reserves the right to sell electrical energy in said City, to parties whose initial connected load exceeds ____ horsepower, in accordance with the manufacturer's standard aggregate rating of the electrical apparatus installed or to be installed.

The Company hereby agrees that the Customer shall have the exclusive right to re-sell electrical energy to all other parties in said City, provided, however, that should the Customer fail to sell electrical energy to power users each of whose aggregate capacity installed or to be installed is less than ____ horsepower, the Company shall have the right to sell electrical energy to such users, after securing the Customer's consent to take such business * * *.

The figures entered in the above blanks are not uniform in the several rate schedules on file with the Commission. The figures range from 5 horsepower to 600 horsepower.

The following provisions are contained both in Rate Schedule "WR–4" and in the Contracts for service under the "WR–4" rate.

FOURTH

Resale Credit:

Subject to limitations in following paragraph a credit against net bills will be allowed on that part of the total energy purchased each month which is equal to the KWH actually resold to retail customers in the preceding month, the amount of such credit to be determined as follows:

0.50¢ per KWH resold not to exceed the number of KWH billed in the first block of the rate schedule in the current month, plus

0.35¢ per additional KWH resold, if any, not to exceed the number of KWH billed in the second block, plus

0.25¢ per additional KWH resold, if any, not to exceed the number of KWH billed in the third block, plus

0.10¢ per additional KWH resold, if any, in excess of the above.

Determination of KWH resold:

For the purpose of billing under this rate schedule, a retail customer is defined as any customer who uses less than 5,000 KWH during the month. Should such customer be served by the distributing agency through two or more meters at one location, then the aggregate consumption by that customer shall determine his eligibility. The municipality shall report to the Company not later than the tenth of each month the number of KWH resold to such retail customers in the preceding month, and such report shall be used by the Company in preparing its bill for the current month's consumption. This report shall show the number of customers and the total KWH resold to them, as a single item for all customers who used less than 1,000 KWH during the month being reported, and as separate items the names and consumptions of all customers who used between 1,000 KWH and 5,000 KWH. Energy resold to larger customers, losses, and energy used by the municipality (even though carried on the books as a sale to some other department of the municipal government) are specifically excluded from eligibility as KWH resold. Should the Company fail to receive such report, the KWH used by the excluded items enumerated in the preceding sentence shall be estimated by the Company and deducted from the total KWH, the remainder then being treated as KWH resold but if the KWH resold is estimated in this manner it shall not exceed 40% of the total KWH to be billed * * *.

The above provisions of the "WR–4" rate schedule and contracts are contained in the designated rate schedules on file with the Commission as listed in Appendix C.

4. Two municipalities and one rural electric cooperative receive service from Georgia Power under special contracts, containing the following provisions:

City of Adel, Rate Schedule FPC Number 256, Article 3:

The Municipality will notify the Light Company promptly of its intention to serve any customer having a connected load of 50 HP or more.

City of Cairo, Rate Schedule FPC Number 25, Article 3; Okefenokee Rural Electric Membership Corporation, Rate Schedule FPC Number 267, Article 3:

The Municipality (Cooperative) will notify the Light Company promptly of its intention to serve any customer having a connected load of 50 HP or more, and further agrees to install a demand meter or demand attachment in conjunction with its watt-hour meter installed to measure said load, and further agrees to read such demand meter monthly and furnish such reading promptly to the Light Company.

The provisions set out above may have the effect of restricting the rural electric cooperatives and municipalities from reselling to certain classes of potential

customers power purchased from Georgia Power under the rate schedules. They constitute rates, charges or classifications or rules, regulations, practices or contracts affecting rates, charges or classifications within the meaning of Sections 205 and 206 of the Federal Power Act and may be unjust, unreasonable, and, therefore, unlawful.

The Commission further finds:

(1) It is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206, 307, 308 and 309. thereof, that Georgia Power Company be directed to show cause in writing why the Commission should not find and determine the above-mentioned provisions in Georgia Power Company's filed rate schedules to be unjust or unreasonable.

(2) In the event that the above-mentioned provisions are found to be unjust or unreasonable it may be appropriate for purposes of the Federal Power Act, particularly Sections 205, 206, 304, 307, 308 and 309 thereof, for the Commission to order a hearing to determine and fix the just and reasonable rates, charges, classifications, rules, regulations, practices or contracts to be thereafter observed and in force for service by Georgia Power Company to rural electric cooperatives and municipalities.

The Commission orders:

(A) On or before July 15, 1963, Georgia Power Company shall respond to this order through Answer as provided in Section 1.9(c) of the Commission's Rules of Practice and Procedure, 18 CFR 1.9(c).

(B) Notices of intervention or petitions to intervene in this proceeding may be filed with the Commission on or before June 20, 1963, and in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8).

APPENDIX A

Customer	Delivery point No.	Rate schedule FPC No.
Colquitt County REC	3	91
Do.	5	227
Do.	6	228
Excelsior EMC	3	95
Flint EMC	2	102
Do.	9	107
Do.	12	512
Irwin County EMC	2	120
Do.	3	121
Jackson EMC	5	125
Jefferson County EMC	3	132
Do.	4	406
Middle Georgia EMC	4	149
Do.	4	420
Do.	5	421
Mitchell County EMC	6	460
Do.	9	159
Do.	10	160
Oconee EMC	1	432
Pataula EMC	3	231
Do.	4	232
Do.	5	233
Three Notch EMC	2	201
Do.	3	202
Walton EMC	2	212
Do.	3	213
Washington County EMC	3	490
Do.	4	491

APPENDIX B

Customer	Delivery point No.	Rate schedule FPC No.
Altamaha EMC	1	273
Do	2	274
Do	3	275
Do	5	277
Do	4	496
Do	6	599
Amicalola	1	545
Do	2	546
Do	5	547
Do	3	332
Do	6	334
Do	7	508
Do	8	624
Canoochee EMC	1	548
Do	2	336
Do	3	337
Do	4	338
Do	5	497
Carroll EMC	1	340
Do	2	341
Do	3	342
Do	4	343
Do	5	344
Do	6	345
Do	7	346
Do	8	509
Do	9	629
Central Georgia EMC	1	347
Do	5	348
Do	6	349
Do	7	350
Do	8	351
Do	9	352
Coastal EMC	1	353
Do	2	354
Cobb County REMC	1	549
Do	2	550
Do	3	551
Do	4	552
Do	5	359
Do	6	609
Colquitt County REC	1	250
Do	4	360
Do	9	361
Do	7	579
Do	8	510
Do	10	527
Do	11	584
Do	12	585
Do	13	586
Do	14	587
Do	15	588
Do	16	571
Cowetta-Fayette EMC	1	363
Do	3	364
Do	5	365
Do	6	366
Do	7	572
Douglas County EMC	1	498
Do	2	499
Do	4	500
Do	5	501
Do	6	502
Excelsior EMC	1	372
Do	4	374
Do	6	376
Do	7	377
Do	8	378
Do	2	503
Do	5	504
Flint EMC	1	379
Do	4	380
Do	6	381
Do	7	382
Do	10	384
Do	8	505
Do	11	506
Do	13	573

Customer	Delivery point No.	Rate schedule FPC No.
Grady County EMC	1	589
Do	3	590
Do	4	591
Do	5	592
Do	6	593
Do	7	594
Habersham EMC	1	387
Do	2	388
Do	4	389
Do	5	390
Do	6	514
Hart County EMC	1	391
Do	3	392
Do	4	393
Do	5	394
Do	6	395
Do	7	600
Irwin County EMC	1	396
Jackson EMC	1	397
Do	3	398
Do	4	399
Do	7	401
Do	8	402
Do	9	403
Do	6	553
Do	10	515
Do	11	620
Jefferson County EMC	1	554
Do	2	555
Do	5	407
Do	6	408
Do	7	409
Do	8	410
Do	9	411
Lamar Electric MC	1	412
Do	3	413
Do	4	414
Do	5	415
Little Ocmulgee EMC	1	416
Do	2	556
Do	3	580
Do	4	581
Do	5	582
Middle Georgia EMC	1	419
Do	6	574
Mitchell County EMC	1	422
Do	2	423
Do	3	424
Do	4	425
Do	7	427
Do	8	428
Do	5	615
Ocmulgee EMC	1	429
Do	3	431
Do	2	583
Oconee EMC	2	628
Do	4	434
Do	5	435
Do	6	516
Do	7	601
Okefenokee REMC	1	436
Do	2	437
Do	3	438
Do	5	528
Do	6	602
Pataula EMC	1	439
Do	2	440
Planters EMC	1	441
Do	2	442
Do	3	557
Do	4	630
Rayle EMC	2	444
Do	4	445
Do	5	446
Do	6	447
Do	7	448
Do	8	449
Do	9	575

Customer	Delivery point No.	Rate schedule FPC No.
Satilla REMC	1	450
Do	2	451
Do	3	452
Do	4	453
Do	5	454
Do	6	455
Do	8	529
Do	9	530
Do	10	531
Do	11	576
Do	2	606
Do	7	186
Sawnee EMC	1	456
Do	3	457
Do	5	459
Do	4	558
Do	6	577
Slash Pine EMC	1	595
Do	2	532
Do	3	533
Do	4	534
Do	5	535
Snapping Shoals EMC	1	461
Do	3	463
Do	4	464
Do	5	465
Do	2	559
Do	6	607
Sumter EMC	3	466
Do	4	467
Do	5	468
Do	6	469
Do	7	520
Do	8	578
Three Notch EMC	1	470
Do	4	536
Do	8	537
Do	6	596
Do	7	597
Do	5	618
Tri-County EMC	1	474
Do	2	475
Do	3	560
Troup County EMC	1	476
Do	3	477
Do	5	479
Do	6	247
Do	7	603
Do	8	604
Upson County EMC	1	480
Do	2	481
Do	3	482
Walton County EMC	1	483
Do	4	561
Do	8	562
Do	6	563
Do	7	241
Do	8	242
Washington County EMC	1	487
Do	2	489
Do	7	521
Do	5	564
Do	6	565

APPENDIX C

The following rate schedules for service to municipalities contain both Articles First and Fourth:

Customer	Delivery point No.	Rate schedule FPC No.	Comments
Acworth		272	
Albany	1	278	
Do	2	279	
Do	3	280	
Do	4	281	
Do	5	282	
Do	7	566	
Barnesville		284	
Blakely		285	
Braselton		611	
Brinson		623	
Buford		287	
Calhoun		288	
Camilla		495	
Commerce		612	
Do		613	
Covington		542	
Dalton	1	296	Receives service under "WR-1" rate, which is similar to "WR-4".
Do	3	298	
Do	4	626	
Do	5	621	
Do	6	622	
Doerun		299	
East Point	1	301	
Do	2	543	
Do	3	569	
Do	4	610	
Elberton	1	303	
Do	2	304	
Ellaville		305	
Flarburn		306	
Fitzgerald		46	
Forsyth		307	

The following rate schedules for service to municipalities contain both Articles First and Fourth:

Customer	Delivery point No.	Rate schedule FPC No.	Comments
Fort Valley		308	In Article First, Company's reservation of the right to sell to customers with connected loads exceeding 100 HP is subject to franchise grants, and does not apply to users under 500 HP being served by the city at the date of the contract.
Grantville		309	
Griffin		310	
Hampton		311	
Hogansville		312	
Jackson		313	
LaFayette		627	
LaGrange		315	
Do	2	570	
Lawrenceville		316	
Mansfield		317	
Monroe		625	
Monticello		322	
Moultrie		56	
Do	2	605	
Newnan		323	
Norcross		619	
Palmetto		324	
Quitman	1	524	
Sandersville		325	
Sylvania		326	
Thomaston		327	
Washington		544	
West Point		329	
Whigham		326	

The following rate schedules for service to municipalities contain only Article Fourth, resale credit:

Customer	Delivery point No.	Rate schedule FPC No.	Comments
Cartersville	1	290	
Do	2	291	
Do	3	567	
College Park	1	541	
Do	2	568	
Dalton	2	297	
Douglas		300	
Marietta	1	623	
Do	2	319	
Do	3	320	
Do	4	614	
Do	5	507	
Sylvester		616	The Company also reserves the right to retain its own customers in the city.
Thomasville	1	538	
Do	2	539	

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

IDAHO POWER COMPANY, PROJECT NO. 1971

INTERIM ORDER AUTHORIZING CHANGES IN WATER RELEASES AT THE OXBOW DEVELOPMENT

(Issued May 27, 1963)

By application filed January 25, 1963 and amended February 14, 1963, Idaho Power Company, licensee for Project No. 1971 on the Snake River in Idaho and Oregon, requested amendment of paragraph (C)(i) of the Commission's order issued November 17, 1960, 24 FPC 962, to change the water releases through the Oxbow spillway and spillway fish trap.

On March 22, 1963, the Commission issued an order fixing hearing concerning fish passage and fish facilities at Project No. 1971, including water releases at the Oxbow development. At a prehearing conference on May 9, 1963, the licensee requested that an interim order be issued changing water releases at the Oxbow development in accordance with the schedule recommended by the Department of the Interior in its letter dated March 28, 1963. The parties participating interposed no objection to licensee's request.

The changes in water releases at the Oxbow development, as hereinafter provided, may be useful in connection with studies of the fish passage problem at Project No. 1971.

The Commission finds:

It is appropriate and in the public interest that changes in water releases at the Oxbow spillway and spillway fish trap be made as hereinafter provided.

The Commission orders:

Effective as of the date of issuance of this order and pending further order of the Commission, paragraph (C)(i) of the order issued November 17, 1960, is modified to provide that water shall be released through the Oxbow spillway and spillway fish trap in accordance with the following schedule:

(a) From November 1 through March 15 of each year a minimum flow of 250 cfs.

(b) From March 16 through June 30 of each year a minimum flow of 500 cfs.

(c) From July 1 through August 31 of each year a minimum flow of 250 cfs.

(d) From September 1 through October 31 of each year a minimum flow of 750 cfs.

OPINION NO. 389

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP62-215

OPINION AND ORDER ADOPTING IN PART AND MODIFYING IN PART THE DECISION OF THE PRESIDING EXAMINER

(Issued May 27, 1963)*

Syllabus

1. Test of whether customer contribution toward cost of constructing lateral facilities is required, is whether such contribution is necessary to economic feasibility of project. P. 1061.

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*Initial decision appears on p. 1065. Amended October 2, 1963, 30 FPC 956.

2. Commission *rejects* use of 10-cent formula here; *states* it was not intended for industry-wide application. P. 1062.
3. Solution adopted here provides for contribution in aid of construction to be determined by relationship of expenditures to revenues [for each lateral] in terms of existing ratio between these factors on pipeline's existing system. P. 1062.
4. Commission *states* that two-part formula comes as close as possible [in instant case] to bringing new customers onto pipeline's system on parity with existing customers. P. 1062.
5. Certificate conditioned to provide that applicant not include in its rate base any amounts expended for lateral construction for which it is entitled to receive reimbursement from retail customers. P. 1063.
6. Commission *issues* certificate of public convenience and necessity under Section 7, of the Natural Gas Act. P. 1064.

John P. Furman and *Joseph D. Whiteman* for Kansas-Nebraska Natural Gas Company, Inc.

Lloyd J. Marti for Western Power and Gas Company.

David B. Ward for Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

WOODWARD, *Commissioner:* This proceeding is before us on exceptions filed by Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska), Western Power and Gas Company (Western), and the Commission staff to the Presiding Examiner's Initial Decision issued February 11, 1963. In that Decision, the Examiner would grant a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act, to Kansas-Nebraska to construct and operate transportation facilities to provide natural gas service at retail to the Nebraska towns of Polk (population 433), Winside (population 416), Sargent (population 876), and Comstock (population 235) and at wholesale to the Natural Gas Distributing Company of Nebraska which proposes to construct and operate a distribution system in the town of Grant, Nebraska (population 1166).

The application was filed on March 15, 1962 and was supplemented on May 16, 1962. It involves the construction and operation of approximately 63 miles of 2-inch and 3-inch diameter lateral pipelines and five town border stations. Kansas-Nebraska estimates the annual and peak day requirements of Polk for the first three years of operation as follows:

Year of operation	Peak day (Mcf)	Annual (Mcf)
1st	85	3,075
2d	130	10,800
3d	165	14,700

The facilities to serve Polk will be approximately 6.5 miles of 2-inch pipeline and a town border station which have a combined estimated cost of $28,000.

The annual and peak day requirements for Winside for the first three years of operation are estimated by Kansas-Nebraska as follows:

Year of operation	Peak day (Mcf)	Annual (Mcf
1st	80	7,500
2d	125	22,000
3d	160	25,500

The facilities to serve Winside will consist of approximately 12 miles of 2-inch pipeline and a town border station at a combined estimated cost of $51,500.

The annual and peak day requirements for Sargent and Comstock for the first three years of operation are estimated by Kansas-Nebraska as follows:

Year of operation	Peak day (Mcf)	Annual (Mcf)
1st	220	23,300
2d	330	60,300
3d	420	70,300

Included in the above table are sales of 5500 Mcf per year to irrigation customers who will be served directly from the laterals. The facilities required to serve Sargent and Comstock will consist of approximately 22 miles of 3-inch and approximately 2½ miles of 2-inch pipeline and two town border stations at a combined estimated cost of $140,000.

The annual and peak day requirements for Grant for the first three years of operation are estimated as follows:

Year of operation	Peak day (Mcf)	Annual (Mcf)
1st	230	8,150
2d	350	29,200
3d	440	39,600

In order to deliver to Grant, Kansas-Nebraska will install approximately 20 miles of 2-inch pipeline and a town border station which will have an estimated combined cost of $90,000.

Kansas-Nebraska proposed that it would receive, from each customer, contributions in aid of construction based upon a "10-cent formula." That formula provides that Kansas-Nebraska will spend 59.88 cents per Mcf of estimated third year sales for lateral construction and that it will receive contributions from customers to the extent that additional amounts are needed to extend laterals to city gates.

Pursuant to notice issued by the Commission on August 23, 1962, this proceeding was heard by the Presiding Examiner on October 1 and 2, 1962. Prior thereto, a petition to intervene was filed by Western, a wholesale customer of Kansas-Nebraska, and was granted after commencement of the hearing by order of the Commission issued October 8, 1962. Evidence was presented by Kansas-Nebraska in support of its application and its witnesses were cross-examined. Thereafter, a witness and evidence were presented by the Commission staff and the witness was cross-examined. Finally, one of applicant's witnesses returned to present rebuttal testimony and he was cross-examined. After cross-examination of this witness, no further evidence, either in support of or in opposition to the application was introduced.

The Presiding Examiner found that, from the requirements for service projected in the record, contributions in aid of lateral construction should be received by Kansas-Nebraska from its customers based upon the contribution necessary to maintain Kansas-Nebraska's authorized rate of return for this lateral construction based upon estimated third year sales. In determining third year sales the Examiner excluded industrial sales volumes to the power plants of Winside and Sargent.

Considering the facts of record, the basic elements properly to be considered in determining public convenience and necessity, as contained in the Natural Gas Act and as applied in the Commission and judicial decisions, have been amply satisfied and we so find.

The principal issue in this proceeding is the extent to which Kansas-Nebraska will be permitted to require contributions from customers in aid of lateral construction. The Commission staff excepts to the allowance of any contribution arguing that, since Kansas-Nebraska has in the past constructed laterals to the city gates of communities to be served, it should not be permitted to abandon this practice for the reason that a new practice would produce an unreasonable difference in rates, charges and facilities as prohibited by Section 4(b) of the Natural Gas Act. We agree with the Examiner that contributions in aid of construction should be permitted in this proceeding. As the Examiner correctly stated, the test of whether customer contribution toward the cost of constructing lateral facilities is to be required is whether customer contribution is necessary to the economic feasibility of the project. The record supports the Examiner's finding that such contributions are requisite to the economic feasibility of the several laterals proposed to be constructed and we so find.

The Commission staff argues that, if contributions in aid of construction are to be permitted, the third year sales volumes used to determine the amount of contribution should include the industrial sales to the power plants of Sargent and Winside. Therefore, the staff excepts to the Examiner's finding that revenue from industrial sales are not to be included because the sales would not be based on 10-year or lengthier contracts. The Examiner incorrectly relied upon *Midwestern Gas Transmission Co., et al.*, 22 FPC 775, 798, for this last proposition. As we pointed out in *City of Grant, Missouri, et al.* (Opinion 386), Docket No. CP62-303, *et al.*, April 17, 1963, 29 FPC 754, the industrial sales involved in the *Midwestern Gas* case were substantial, 170,000 Mcf annually, and were projected to be made to customers in an area where coal was less costly than gas and thus realization of the estimated industrial revenues were questionable. For this reason the Commission did not require that a lateral contribution formula be applied to those loads unless executed 10-year service contracts were filed. However, as in the *City of Grant City* case, the volumes involved in the instant proceeding are not substantial, 44,000 Mcf annually, and more important, the liklihood of making these sales is not questioned. In fact, the power plant customers have agreed that, if they terminate or substantially diminish their use of gas, they will continue monthly contributions in aid of construction until the total contribution from all sources equals Kansas-Nebraska's total investment for facilities proposed in this application. Accordingly, we are overruling the Examiner on this point and will include the power plant sales in the third year as volumes upon which our lateral contribution formula will be applied.

The Examiner, in analyzing the results produced by the "10-cent formula" advocated by Kansas-Nebraska, found that the formula produced an excessive rate of return on net investment for the service to Grant and Polk and an inadequate rate of return for the service to Winside and to Sargent and Comstock. Instead of using that formula, the Examiner adjusted the amount of contribution for each lateral so that the ratio between Kansas-Nebraska's investment and estimated third year sales would maintain the rate of return which the Commission has authorized Kansas-Nebraska to receive. This adjustment is supported by the Commission decision in *Northern Natural Gas Co., et al.*, 22 FPC 164, where the Commission declared that contributions for lateral construction should be "proportionate to the failure of the estimated third-year annual

revenues to meet the costs of the branch line as shown by the record." (*Id.* at 173.)

Both Kansas-Nebraska and Western except to the Examiner's failure to apply the "10-cent formula". In criticizing the formula adopted by the Examiner, Kansas-Nebraska finds fault particularly with the fact that the Examiner's computation provides no contribution based on the mainline transmission expense associated with service to these communities. We will not act on these exceptions because we are overruling the Examiner's Decision to the extent that it provides for contribution in aid of construction determined by the relationship of expenditures to revenues in terms of rate of return. The solution which we are adopting in this proceeding provides for contribution in aid of construction to be determined by the relationship of expenditures to revenues in terms of the existing ratio between these factors on the pipeline's existing system.

The computations depicted on Chart I of the Examiner's Decision persuasively demonstrate the inadequacy of a "10-cent formula", at least as regards Kansas-Nebraska. In that Chart it is shown that application of the "10-cent formula" results in both excessive (18.0 percent for Polk and 14.6 percent for Grant) and inadequate (4.3 percent for Winside and 5.0 percent for Sargent and Comstock) rates of return when measured against Kansas-Nebraska's authorized rate of return of 6.5 percent. The Examiner correctly observed that the Michigan Wisconsin "10-cent formula", approved initially in *Michigan Wisconsin Pipe Line Co., et al.*, 21 FPC 552, was not intended to be applied industry-wide but was to be applied to Michigan Wisconsin and its customers based upon the facts of record in that case. The following passage from our opinion in that case clearly supports the Presiding Examiner's comments:

> * * * The major question is whether the 10-cent figure conforms to Michigan Wisconsin's past and future practice and is required by the public interest rather than representing and arbitrary choice of a criterion. Neither on this record nor on any other record has this question been fully explored. Like many other matters which call for the exercise of judgment and discretion, the "validity" of the formula may not be demonstrable with mathematical precision, but as we have indicated above it does provide an objective test which is workable and appears to be reasonable until such time as a substitute can be found based on more definitive criteria. We must risk a tentative solution in order to provide service for the urgent requirements of 7(a) applications which are presently before us for consideration. However, we are prepared to reject the variables in this formula if it fails to meet the pragmatic tests of experience. (*Id.* at 558–59.)

While we agree that a "10-cent formula" is not to be used herein, we nevertheless find several defects in the Examiner's approach. Relating contributions in aid of construction to revenues in terms of rate of return on an *ad hoc* basis is usually an unnecesarily tedious approach, especially in those cases where there are many communities to be served. This approach cannot achieve the precision for which it aims because of uncertain elements in the computation of contributions. For example, third year revenues are estimated, not known; the amount to be allocated for mainline transmission expense associated with the sales from new laterals can be only imprecisely estimated; and, to the extent that a pipeline's return is out-of-line with its authorized return, these laterals will not come in on a parity with the existing system. Since precision is unattainable, we have devised a formula which we believe comes as close as is possible in this proceeding to bring new customers onto a pipeline's system on a parity with existing customers.

An essential requirement in extending service to a new customer is that the extension should not unduly burden existing customers. This basic require-

ment is met if the added annual cost of service to the pipeline for rendering the service are offset by the added annual revenue received. We shall require Kansas-Nebraska to construct a lateral at a cost which bears the same proportion to estimated revenues from sales in the third year of operation of the lateral as does the pipeline's existing system net plant in the most recent year to its existing system revenues for that year. Any additional expense necessary to extend the lateral to a city gate of a community to be served will be received by the pipeline from the customer as a contribution in aid of construction. This policy is expresed in the following formula:

Step 1: Amount paid by pipeline construction toward cost=

$$\frac{\text{System Net Plant}}{\text{System Revenues}} \times \text{Revenues from 3d year sales from lateral}$$

Step 2: Customer Contribution=
Cost of lateral required—Amount paid by pipeline toward construction cost

The following table shows the contributions in aid of construction which Kansas-Nebraska is to receive from its customers in this proceeding:

CONTRIBUTIONS BASED ON INVESTMENT TO REVENUE RATIO

Town	Third year revenues	System net plant + System revenues	Kansas-Nebraska investment	Customer contributions	Total project
Polk	$5,586	[1] 2.21	$12,345	$15,655	$28,000
Winside	7,965	2.21	17,603	33,897	51,500
Sargent & Constock	21,839	2.21	48,264	[2] 91,736	140,000
Grant	14,256	2.21	31,506	58,494	90,000
Total	49,646	2.21	109,718	199,782	309,500

[1] Kansas-Nebraska's average system utility plant during 1962, the most recent year for which data has been filed, was $58,349,231 ($55,170,547 on Jan. 1, 1962 and $61,527,917 on Dec. 31, 1962) and its system revenues during 1962 were $26,425,266. These figures are taken from the Annual Report, FPC Form No. 2, filed by Kansas-Nebraska Natural Gas Company for the year 1962 and we have taken official notice of such report, which is subscribed and verified by Fred Steffens, Secretary and Controller.
[2] This figure includes $7,000 to be contributed by irrigation customers.

It is noted that the results arrived at herein are based on third year estimated sales submitted by Kansas-Nebraska. While the Commission has had no evidence before which challenges these estimates, they are nevertheless subject to possible variation as actual service commences. In order to protect the customers who will be called upon to contribute to the cost of the laterals, the order herein will contain a provision for adjusting the amount of the contribution, should actual sales substantially exceed the estimates.

The Commission staff excepted to the Presiding Examiner's failure to prescribe accounting treatment by Kansas-Nebraska for the facilities to be constructed and for the contributions received in aid of construction. Kansas-Nebraska will receive interest payments of 6.5 percent from its retail customers on the unpaid balance of lateral construction exenditure for which it will be reimbursed in the future by those customers. In order to prevent a double return being earned on that construction we will condition the certificate being issued to Kansas-Nebraska to provide that Kansas-Nebraska shall not include these amounts in its rate base. We find that it is unnecessary to prescribe any further accounting treatment at this time.

The Commission further finds:

(1) Kansas-Nebraska Natural Gas Company, a Kansas corporation having its principal place of business in Phillipsburg, Kansas, is a "natural gas company" within the meaning of the Natural Gas Act, as amended, as heretofore found

by the Commission in its Order of April 6, 1943 in Docket No. G–259 (3 FPC 966).

(2) Kansas-Nebraska Natural Gas Company has received franchises from the Village of Polk, Nebraska, the Village of Winside, Nebraska, the City of Sargent, Nebraska, and the Village of Comstock, Nebraska to provide natural gas service to the inhabitants of those communities.

(3) Natural Gas Distributing Company of Nebraska has received a franchise from the City of Grant, Nebraska, to distribute and sell gas in that community.

(4) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and delivery of natural gas by Applicant, and the sale for resale to the Natural Gas Distributing Company of Nebraska, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(6) The requirement that Kansas-Nebraska Natural Gas Company provide service as above set forth will not place any undue burden upon it nor require it to enlarge its facilities, nor impair its ability to render adequate service to its existing customers.

(7) The certificate of public convenience and necessity granted to Kansas-Nebraska in this proceeding should be conditioned upon Applicant's compliance with the conditions detailed in ordering paragraph (B) below.

(8) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) and (e) of Section 157.20 of such Regulations.

(9) Except as granted herein, the exceptions to the Presiding Examiner's Initial Decision should be and are hereby denied.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Kansas-Nebraska Natural Gas Company, to construct and operate the proposed facilities and to transport and deliver additional volumes of natural gas as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The following conditions attach to the certificate issued to Kansas-Nebraska herein:

(i) Applicant shall receive, as contributions in aid of construction, $15,655 from the customers in Polk, $33,897 from the customers in Winside, $91,736 from the customers in Sargent and Comstock, and $58,494 from the Natural Gas Distributing Company of Nebraska.

(ii) Applicant shall not include in its rate base any amounts it has expended for lateral construction for which it is entitled to receive reimbursement in the future from its retail customers.

(iii) Three years and 60 days from date of first rendering service to each community, Kansas-Nebraska shall file with the Commission a statement showing the actual volumes delivered in the third year compared with the estimate contained herein. If actual volumes exceed by more than 20 percent the esti-

mated volume, Kansas-Nebraska shall also submit for the Commission's approval a plan for reducing the contribution to conform to actual experience based on the opinion herein.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned further upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) and (e) of Section 157.20 of such Regulations.

(D) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

(E) The Presiding Examiner's Initial Decision issued herein on February 11, 1963, is hereby modified as set forth in this opinion and as so modified is adopted by the Commission to the extent not inconsistent herewith. Exceptions to the Examiner's Decision not herein granted are denied.

INITIAL DECISION

UPON APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 11, 1963)

RENDELMAN, *Presiding Examiner:* On March 15, 1962, Kansas-Nebraska Natural Gas Company (Kansas-Nebraska) filed an application for a certificate of public convenience and necessity, pursuant to Section 7(c) of the Natural Gas Act, authorizing the construction and operation of approximately 63 miles of 2" and 3" lateral pipeline and five town border stations which would enable the applicant, using its own distribution system, to provide service at retail to the towns of Polk (population 433), Winside (population 416), Sargent (population 876), and Comstock (population 235), and at wholesale to the Natural Gas Distributing Company of Nebraska (Natural) which proposes to construct and operate the distribution system in the town of Grant (population 1166). All five towns are in Nebraska but, with the exception of Sargent and Comstock which will be on the same line, are located in different parts of the state and each therefore requires the construction of a separate lateral transmission line from the main line. The total estimated cost of construction of the project is $309,500, of which it is proposed that the Applicant bear $79,660, the balance of $229,840 to be contributed by the towns with the exception of $7,000 contributed by irrigation customers.

The extent of the project insofar as each of the towns is concerned and the amount it is proposed be contributed by each is as follows:

Polk.—Install approximately 6.5 miles of 2" pipeline and a town border station at a total estimated cost of $28,000, of which $11,800 would be borne by Kansas-Nebraska, the balance of $16,200 to be contributed by the town.

Winside—Install approximately 12 miles of 2" pipeline and a town border station at a total estimated cost of $51,500, of which $11,450 would be borne by Kansas-Nebraska, the balance of $40,000 to be contributed by the town.

Sargent and Comstock—Install approximately 22 miles of 3" and 2½ miles of 2" pipeline, and a town border station at a total estimated cost of $140,000, of which $27,700 would be borne by Kansas-Nebraska, the balance of $112,300, with the exception of the $7,000 contributed by irrigation customers, to be contributed by the towns.

Grant—Install approximately 20 miles of 2" pipeline and a town border station at a total estimated cost of $90,000, of which $28,710 would be borne by Kansas-Nebraska, the balance of $61,290 to be paid by Natural in a lump sum. This cost in turn would be recovered by Natural from its customers.

In each case it is proposed that the contribution in aid of construction be collected from domestic, commercial and industrial customers over a period of nine years by way of a surcharge on the monthly bill based on the number of Mcf consumed. Kansas-Nebraska's application is supported by a resolution passed by each of the towns concerned herein, expressing the desire and need for gas service and willingness to contribute towards the cost of construction of the respective laterals.

Pursuant to notice of the Commission, issued August 23, 1962, the hearing herein was held on October 1 and 2, 1962. Prior thereto a petition to intervene was filed by Western Power and Gas Company (Western), a wholesale customer of Kansas-Nebraska, the only Intervener herein, and granted after commencement of the hearing by order of the Commission issued October 8, 1962.

All parties to this proceeding, including the Staff of this Commission, agree that it would be in the public interest to provide gas service to the five communities concerned, and that a certificate of public convenience and necessity should issue. The Staff, however, opposes customer contribution towards the cost of construction of the laterals and urges that Kansas-Nebraska should bear the entire cost of construction of the transportation facilities from the main line to the respective towns. It is Staff's position that inasmuch as Kansas-Nebraska has never before required contributions towards the cost of construction in similar applications to the Commission, to permit such contribution in this case without sufficient cause would constitute discrimination "against these customers contrary to the time tested principles of public utility regulation in general and Sections 7(e) and 4(b) of the Natural Gas Act in particular." Kansas-Nebraska and Western, on the other hand, argue that under the circumstances, construction of the necessary transportation facilities without customer contribution is not economically feasible in that the ordinary schedule of rates would not be sufficient to amortize the investment required therefor. Kansas-Nebraska's estimate of third years' sales (not contested by the Staff) as set forth in Exhibit No. 2 indicates that none of the towns would produce sufficient revenue to pay their cost of service.

The true test of whether or not there should be customer contribution towards the cost of construction of lateral transmission facilities is not whether or not contribution was required by the company for similar projects in the past, but whether or not construction of the project presently under consideration is economically feasible without such customer contribution. It is fundamental that economic feasibility is an issue in every certificate proceeding, *El Paso Natural Gas Pipeline Company*, 26 FPC 687, 688; *Panhandle Eastern Pipe Line Company*, 15 FPC 46, affirmed, 247 F. 2d 306.

Staff's computation shows that construction without contribution would result in a reduction of Kansas-Nebraska's overall rate of return from the 6.5 percent which the Commission allowed Kansas-Nebraska in its last rate case[1] to 6.48 percent. By reason of the fact that such reduction is minimal, Staff contends that Kansas-Nebraska should be willing to absorb this small difference. Admit-

[1] Docket No. G-12391, 25 FPC 448, 452 (March 8, 1961).

tedly, the effect on Kansas-Nebraska's overall rate of return in the instant case without contribution would be minimal, but the logical weakness in Staff's position becomes apparent when it is considered that there are many other small towns desiring gas service in the area served by Kansas-Nebraska, but which are presently not being served because Kansas-Nebraska considers it economically not feasible to do so. If the towns included in the instant applications were provided with gas service without contribution towards the cost of lateral construction, there would be no basis for denial of service to these additional small towns with a consequent diminution in the Kansas-Nebraska rate of return with each connection. Inasmuch as the area served by the Applicant in Nebraska is predominantly agricultural and liberally besprinkled with many sparsely populated towns it can readily be seen that the minimal effect on Kansas-Nebraska's overall rate of return encountered in the instant case, if multiplied by the number of towns still to be connected or desiring gas service, would eventually result in an appreciable and substantial effect on Kansas-Nebraska's rate of return. Accordingly, it is held that construction of the necessary laterals with contribution towards the cost thereof by the towns concerned would be in the public interest, and that Kansas-Nebraska has sustained the burden of proof with respect to its contention that service without contribution would not be economically feasible.

There remains for consideration, however, the amount which each of the towns should be called upon to contribute. The Applicant has calculated the amount of contribution in each case by application of the so-called Michigan-Wisconsin ten-cent formula as applied by the Commission in *Michigan-Wisconsin Pipeline Company*, Docket No. G–13246, 21 FPC 552. While Staff has commented on the effect on Kansas-Nebraska's overall rate of return if the entire expense of construction is borne by the Applicant, and under the same circumstances the rate of return on company investment for each project,[2] there has been no determination of the effect on the rate of return in relation to net investment of the company in the facilities for each town if contribution is made as proposed.

As demonstrated by the following chart (I), the results derived thereby disclose a rather drastic influence on such rate of return :[3]

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[2] Staff has calculated that without contribution the rate of return in relation to Kansas-Nebraska's investment in the facilities for each town would be 3.34 percent for Grant, 4.79 percent for Polk, 2.82 percent for Winside, and 2.84 percent for Sargent and Comstock. For the entire project the average rate of return would be 3.16 percent.

[3] Exhibits No. 2 and 3 set forth Kansas-Nebraska's calculations with respect to economic feasibility both with and without industrial sales. Since the Commission has limited consideration of industrial sales to that derived from 10-year or lengthier contracts, *Midwestern Gas Transmission Co.*, 22 FPC 775, 798, revenue from industrial sales has not been included.

CHART I

KANSAS-NEBRASKA NATURAL GAS CO., INC., DOCKET NO. CP62-215

COMPUTATION OF RATE OF RETURN BASED ON THIRD YEAR ESTIMATE OF ANNUAL SALES

	Proposed service areas				Total
	Grant	Polk	Winside	Sargent and Comstock	
1. Total transmission investment	$90,000	$28,000	$51,500	$140,000	$309,500
2. Customer contribution	61,290	16,200	40,050	112,300	229,840
3. KNNG investment	28,710	11,800	11,450	27,700	79,660
4. Average depreciation reserve—3d year	9,000	2,800	5,150	14,000	30,950
5. Net investment reserve—3d year	19,710	9,000	6,300	13,700	48,710
6.					
7. Third year revenues	14,256	5,586	5,320	14,364	39,526
8.					
9. Cost of service:					
10. Cost of gas	5,148	1,911	1,820	4,914	
11. Ad valorem taxes	900	280	515	1,400	
12. Operating cost	900	280	515	1,400	
13. Depreciation	3,600	1,120	2,060	5,600	
14. FIT—4.2%	828	378	265	575	
15. Return—6.5%	1,281	585	410	891	
16					
17. Total cost of service	12,657	4,554	5,585	14,780	37,576
18.					
19. Excess of revenue above cost of service	1,599	1,032	(265)	(416)	1,950
20.					
21.					
22. Total income:					
23. Return @6.5% (line 15)	1,281	585	[1] 274	[1] 687	
24. Excess of revenue above cost of service (line					
25. 19)	1,599	1,032			
26.					
27. Total income	2,880	1,617	274	687	5,458
28.					
29. Percent rate of return (line 27÷line 5)	14.6	18.0	4.3	5.0	11.2

[1] Total return is less than 6.5%.

It can readily be seen that if contribution is made in accordance with the Michigan-Wisconsin 10-cent formula, the rate of return on net investment in the third year of operation [4] in the case of Grant and Polk will far exceed, and the rate of return for Winside, Sargent and Comstock will fall below, the 6.5 percent rate of return heretofore fixed by the Commission. Moreover, the average rate of return on Kansas-Nebraska's third-year net investment of $48,710 in the facilities for the project as a whole would be 11.2 percent, far in excess of the prescribed 6.5 percent.

The Commission in the *Michigan-Wisconsin case*, 21 FPC 558, 559 made it clear that its approval of the so-called 10-cent formula proposed therein was not intended for industry-wide application, and that such approval was limited to the record made in that case. Because of the several hundred towns involved, it was there necessary and practical to devise a formula suitable for general application to the circumstances in that case. However, where as in the instant case computation of a rate of return in relation to net investment is readily accomplished, a more exact approach becomes possible. The more realistic solution, instead of the Michigan-Wisconsin 10-cent formula which results in a rate of return too high in some cases and too low in others, would seem to lie in the adjustment of the amount of contribution in relation to the net investment in

[4] In *Northern Natural Gas Company*, 22 FPC 164, 172, the Commission agreed that "the third year, * * * is the proper criterion in determining the feasibility of a given branch line."

each instance, so as to maintain as nearly as possible the rate of return heretofore fixed by the Commission. The following charts (II and III) set forth the method of computation, and the amount of contribution by each town, required to maintain the 6.5 percent rate of return:

CHART II

KANSAS-NEBRASKA NATURAL GAS CO., DOCKET NO. CP62-215

COMPUTATION OF LATERAL INVESTMENT REQUIRED OF COMPANY AND CUSTOMERS

	Proposed service areas			
	Grant	Polk	Winside	Sargent and Comstock
1. Third year sales—Mcf	39,600	14,700	14,000	37,800
2. Third year revenue	$14,256	$5,586	$5,320	$14,364
3.				
4. Operating revenue deductions:				
5. Cost of gas	5,148	1,911	1,820	4,914
6. Ad valorem tax	900	280	515	1,400
7. Operating cost	900	280	515	1,400
8. Depreciation	3,600	1,120	2,060	5,600
9. Total	10,548	3,591	4,910	13,314
10. Balance of revenue available for taxes and return (line 2—				
11. line 9)	3,708	1,995	410	1,050
12. Third year net investment of K-N to provide 6½%				
13. return [1]	34,600	18,600	3,800	9,800
14. Plus—4% depreciation × 2½ years × gross investment	9,000	2,800	5,150	14,000
15.				
16. Total orginal investment required of K-N [2]	43,600	21,400	8,950	23,800
17.				
18. Required cost contribution	46,400	6,600	42,550	[3] 116,200
19. Total cost of facilities	90,000	28,000	51,500	140,000

[1] Divide line 11 by 10.7% (6.5% return + 4.2% income taxes).
[2] Compare with chart I, line 3.
[3] This figure includes $7,000 contributed by irrigation customers.

CHART III

COMPARISON OF REQUIRED ORIGINAL INVESTMENT BY KANSAS-NEBRASKA

Proposed service areas	Per company	Per chart II	Difference
1. Grant	$28,710	$43,600	$14,890
2. Polk	11,800	21,400	9,600
3. Winside	11,450	8,950	(2,500)
4. Sargent and Comstock	27,700	23,800	(3,900)
Total	79,660	97,750	18,090

The results derived from the above calculations although decreasing the contribution of Grant and Polk, make necessary an increase in the amounts contributed by Winside, and Sargent and Comstock, but this is not inconsistent with the general policy of the Commission as expressed in *Northern Natural Gas Company*, 22 FPC 164, 173, to the effect that contribution towards the cost of lateral transmission facilities should be "proportionate to the failure of the estimated third-year annual revenues to meet the costs of the branch line as shown by the record." In the instant case, the correlative adjustment of the contribution of each town to net investment of the company so as to maintain the prescribed rate of return achieves the desired result.

It may be argued that, if based on third-year sales, the amount of contribution by each town is fixed so as to yield 6.5 percent on net investment therein, such towns will not bear their proportionate share of main line transmission expenses. Under much the same circumstances, a similar contention was raised in *Northern Natural Gas Company, supra*, but the Commission evidently afforded little weight thereto in stating at page 174, "it would appear that no undue burden would be placed on the present customers." In any case, an adjustment in Kansas-Nebraska's rate schedule to reflect such additional main line transmission expense would undoubtedly be considered by the Commission in any subsequent rate application. Moreover, Section 5(a) of the Natural Gas Act provides a remedy to any present customer of Kansas-Nebraska feeling sufficiently aggrieved by reason thereof.

Additional Findings and Conclusions

Upon consideration of the record and briefs filed in these proceedings, the following findings and conclusions are made. Such findings and conclusions constitute a summary of, and are deemed to be supplementary to, the findings and conclusions heretofore stated:

(1) Kansas-Nebraska Natural Gas Co., Inc., a corporation organized and existing under the laws of the State of Kansas with its principal place of business in Phillipsburg, Kansas, is engaged in the transportation and sale of natural gas in interstate commerce for resale and ultimate public consumption subject to the jurisdiction of the Commission, and is a "natural gas company" within the meaning of the Natural Gas Act.

(2) The facilities concerned in this application for a certificate of public convenience and necessity are proposed for use in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, together with the construction and operation thereof, and are subject to the requirements of Section 7 of the Natural Gas Act.

(3) The Applicant is able and willing properly to do the acts and perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the facilities including the service to be provided as proposed by Kansas-Nebraska are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the general terms and conditions set forth in paragraphs (a), (b), (c) and (e) of Section 157.20 of the Commission's Regulations shall attach to the certificate hereinafter issued to the Applicant and to the exercise of the rights granted hereunder.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission, as follows:

(A) A certificate of public convenience and necessity is hereby issued to Kansas-Nebraska upon the conditions hereinafter set forth, authorizing the construction and operation of the proposed facilities, and for the sale of natural gas as more fully described hereinabove and in the company's application in this proceeding.

(B) The following conditions shall attach to the certificate issued Kansas-Nebraska herein.

(1) Contribution towards the cost of construction of the facilities certificated herein shall be made by Kansas-Nebraska and by the respective towns concerned as follows:

	Total estimated cost	By Kansas-Nebraska	By the town
1. Grant	$90,000	$43,600	$46,400
2. Polk	28,000	21,400	6,600
3. Winside	51,500	8,950	42,550
4. Sargent and Comstock	140,000	23,800	116,200

(C) In the event actual project costs vary from estimated costs, the contribution of the parties thereto shall be in the same proportion as their respective contributions, as hereinabove ordered, bear towards the estimated costs.

MARTIN E. RENDELMAN,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MONTANA-DAKOTA UTILITIES CO., DOCKET NO. CP60-56

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 27, 1963)

On March 11, 1960, Montana-Dakota Utilities Company (Applicant) filed an application in Docket No. CP60-56, as supplemented April 18 and May 26, 1960, seeking authorization to construct and operate additional main line and appurtenant facilities and to replace certain other main line facilities on its Cabin Creek-Bismark line in Fallon County, Montana and Golden Valley County, North Dakota and its Elk Basin-Billings line in Carbon County, Montana. Applicant estimated the cost of construction to be $1,732,000, and the cost of retiring existing facilities to be $170,322. More specifically, the facilities proposed by Applicant include:

(1) About 22.7 miles of 16-inch pipeline replacing 22.7 miles of 12¾-inch pipeline beginning in Fallon County, Montana and terminating in Golden Valley County, North Dakota. Temporary authority was granted on June 10, 1960.

(2) 7.0 miles of 10¾-inch and 5.6 miles of 12¾-inch pipeline to loop 12.6 miles of existing 12¾-inch pipeline in Morton County, North Dakota. Temporary authority was granted May 19, 1960.

(3) 15.9 miles of 12¾-inch pipeline to loop 15.9 miles of existing 12¾-inch pipeline in Carbon County, Montana. Temporary authority was granted June 10, 1960.

(4) Installation and operation of one 880 HP compressor unit at the Cabin Creek Station in Fallon County, Montana. Temporary authority was granted June 10, 1960.

(5) Abandon and salvage 22.7 miles of 12¾-inch pipeline in Fallon County, Montana and Golden Valley County, North Dakota.

Pursuant to due notice, a public hearing was held in Washington, D.C., on May 15, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Montana-Dakota Utilities Company, a Delaware corporation with its principal place of business in Minneapolis, Minnesota, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) Construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon the Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Montana-Dakota Utilities Company, to abandon, construct and operate the proposed facilities as hereinbefore described, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TOWN OF NOXAPATER, MISSISSIPPI, DOCKET NO. CP63-128

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 27, 1963)

On November 13, 1962, as supplemented on February 11, 1963, the Town of Noxapater, Mississippi (Applicant) filed in Docket No. CP62-128 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Southern Natural Gas Company (Southern Natural) to establish physical connection of its transmission facilities with the facilities to be installed by the Applicant and to sell natural gas for resale to the citizens within the town limits and environs, all as more fully set forth in the application.

Applicant proposes to construct approximately 12 miles of 3-inch pipeline, a metering station and a distribution pipeline system in the town of Noxapater and adjacent area for the purpose of distributing and selling natural gas to consumers in that area. The facilities are estimated to cost $230,000 and financing of the construction cost will be made through the sale of revenue bonds and grants in aid.

The application as supplemented, shows the daily volume of gas to be purchased on a peak day is 336 Mcf, and the annual volume is 25,989 Mcf.

Southern Natural Gas Company filed answers to the application and Supplement stating that it consents to the granting of the order requested and admitting that it has the capacity and gas to meet the requirements of the applicant.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on April 17, 1963 (28 F.R. 3745). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Southern Natural Gas Company, is a "natural gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G–296 (3 FPC 822).

(2) Applicant, Town of Noxapater, Mississippi, is a municipal corporation, under the laws of Mississippi and it is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in the said municipality.

(3) It is necessary, desirable and in the public interest that Southern Natural Gas Company be directed to establish physical connection of its natural gas transmission system with the facilities proposed by the Applicant and to sell and deliver to it up to 336 Mcf of gas per day, as set forth in the applications and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Southern Natural within one year from the date of issuance of this order.

(5) The requirement that Southern Natural serve Applicant, as proposed, will not place an undue burden upon Southern Natural nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Southern Natural Gas Company be and is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of the Applicant and to sell and deliver up to 336 Mcf of natural gas to Applicant per day, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Southern Natural within one year from the date of issuance of this order.

(C) Southern Natural shall report to the Commission in writing the date of commencement of service within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 187

ORDER DETERMINING NET CHANGE IN ACTUAL LEGITIMATE ORIGINAL PROJECT COST; AND PRESCRIBING ACCOUNTING THEREFOR

(Issued May 27, 1963)

Pacific Gas and Electric Company, Licensee for Project No. 187,[1] from time to time filed statements, pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming for the period from October 1, 1924, through December 31, 1954, project additions and retirements resulting in a net increase of $248,076.45 in the amount of the actual legitimate original cost of the project (Bullards Bar), and a total claimed actual legitimate original cost of the project as of December 31, 1954, of $1,609,485.75.[2] By order issued September 17, 1940 (2 FPC 808), the Commission determined the initial actual legitimate original cost of the project as of September 30, 1924, to be $1,361,409.30. The claimed net increase in project cost results from claimed gross project additions and gross project retirements totaling $299,504.78 and $51,327.33, respectively, and contributions in aid of construction in the credit amount of $101.00, all as more specifically shown in the attached schedule.

The Commission's staff made a field examination of the books and records of Licensee and other data for the purpose of ascertaining the correctness of the claimed net cost. Following that study an agreement subject to Commission approval was reached between the staff and Licensee's representatives with respect to (1) the exclusion from project costs of Licensee's reconstructed project transmission line terminus relocated outside of project boundaries, in the vicinity of its non-project Colgate Powerhouse thereby effecting a reduction of $8,320.70 in Licensee's claimed and recorded project costs for the period from October 1, 1924 through December 31, 1954; and (2) the accounting disposition thereof as shown by the following journal entry:

No.	Title	Debit	Credit
Account 101 [3]	Electric plant in service nonproject	$8,320.70	
351	Clearing land and rights-of-way		$2,028.66
355	Poles and fixtures		4,528.04
356	Overhead conductors and devices		1,764.00

[3] Account references are to account numbers and titles prescribed in the Commission's revised Uniform System of Accounts for Public Utilities and Licensees, effective January 1, 1961, except in the attached schedule, which employs account numbers and titles prescribed in the Commission's Uniform System of Accounts prior to January 1, 1961. This reflects the fact that items of project cost were entered upon Licensee's books of account prior to January 1, 1961.

Staff analysis of Licensee's provisions for project depreciation has not been completed, and the Staff recommends that the Commission defer for future con-

[1] The project is located on the North Fork of the Yuba River in the vicinity of Camptonville, County of Yuba, California. The Yuba Development Company was granted a license on April 23, 1923, for a period of 50 years, authorizing it (pursuant to Section 4(d) of the Federal Water Power Act) to construct, operate and maintain the project works. On January 7, 1930, the Commission approved the transfer of the license to the Pacific Gas and Electric Company effective as of October 7, 1929. 3rd Annual Report of the Federal Power Commission, p. 261.

[2] Articles 19, 25 and 26 of the license provide for Commission determination of the actual legitimate original cost of the project together with any addition to or betterment thereof, all retirements of project property, and the accrued depreciation applicable to project properties.

sideration and determination the amount of accrued depreciation applicable to in service project properties for the period from the effective date of the License for Project No. 187.

The Commission's staff recommends and Licensee by letter dated December 29, 1961, concurs that the Commission determine: (1) the net increase or change in the actual legitimate original cost of the project during the period October 1, 1924 through December 31, 1954, to be $239,755.75 comprised of gross additions of $291,184.08, gross retirements of $51,327.33 and contributions in aid of construction of $101.00; (2) the actual legitimate original cost of the Bullard's Bar project, as of December 31, 1954, to be $1,601,165.05.

The California Public Utilities Commission was advised by letter of this Commission dated June 25, 1962, of the proposed adjustment and the accounting disposition and the resulting project costs as set forth above. By letter dated July 9, 1962, that Commission indicated no objection thereto.

The Commission finds:

(1) Licensee, by its tentative agreement to the proposed adjustment and accounting disposition and the resulting project costs, and the California Public Utilities Commission by its letter, referred to above, have obviated the necessity for notice and opportunity to protest provided by Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

The foregoing adjustment and the accounting disposition are reasonable and appropriate for the purposes of the Federal Power Act, and therefore should be approved and directed as hereinafter provided.

(3) The net increase or change in the actual legitimate original cost of the Bullard's Bar project for the period from October 1, 1924, through December 31, 1954, is $239,755.75 comprised of gross additions of $291,184.08, gross retirements of $51,327.33 and contributions in aid of construction of $101.00; and the resulting actual legitimate original cost of the Bullard's Bar project as of December 31, 1954, is $1,601,165.05, classified by primary plant accounts as shown by the attached schedule.

(4) It is necessary and appropriate for the purposes of the Federal Power Act that the determination of the accrued depreciation applicable to in service project properties of Project No. 187 for the period from the effffective date of the license be reserved for future Commission consideration as hereinafter provided.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for purposes of this order.

(B) The foregoing adjustment and the accounting disposition as proposed by the staff and agreed to by the Licensee are hereby approved and directed to be made by Licensee.

(C) Licensee, to the extent that it has not already done so, shall (a) establish and maintain control and detail project accounts for Project No. 187 showing the debit amount of $239,755.15 as the net increase or change in the project cost for the period October 1, 1924 through December 31, 1954; and the total debit balance of $1,601,165.05 as the actual legitimate original cost of the project as of December 31, 1954; all as more specifically shown in the attached schedule classified by primary plant accounts of the Commission's Uniform System of Accounts prescribed for Public Utilities and Licensees.

(D) The matter of Commission determination of the accrued depreciation applicable to in service project properties of Project No. 187 for the period from the effective date of the license, is hereby expressly reserved for future Commission consideration and decision.

(E) Licensee shall within 90 days from the issuance of this order file with the Commission, in quintuplicate, F.P.C. Form No. 7 and certified copies of licensee's adjusting journal entries as of December 31, 1954 showing compliance with this order; three copies of that form and those journal entries to be submitted to the Secretary, Federal Power Commission, Washington 25, D.C., and two copies thereof to be submitted to the Regional Accountant, Federal Power Commission, San Francisco 11, California.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-184

ORDER MODIFYING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 27, 1963)

On April 24, 1963, Southern Natural Gas Company (Applicant) filed a petition to modify the Commission's order issued April 10, 1963, 29 FPC 724, in Docket No. CP63-184 to delete therefrom paragraph (D) and to extend the time within which Applicant is required by paragraph (B) of such order to accept the certificate issued therein all as more fully described in the position filed herein.

The Commission's order issued April 10, 1963, in Docket No. CP63-184 authorizes applicant to sell natural gas on an interruptible basis to David C. Crow d/b/a Bayou Meadow Farm for use in operating gas engines for the propulsion of irrigation pumps on said farm in East Carroll Parish, Louisiana. The original application in this procedure estimated the costs of constructing the proposed line tap and measuring facilities at $1,160 which Applicant stated it would defray from cash on hand.

Paragraph (D) of the order provided: "the certificate issued by paragraph (A) above is limited to construction at a total cost not to exceed $1,160". Applicant states that while the $1,160 figure represents a reasonable estimate of the cost of the proposed line tap and measuring facilities the actual cost thereof may exceed the estimated cost, and it does not want to run the risk of having the certificate become a nullity in the event the actual cost of the facilities exceeds the cost as limited by Paragraph (D). For this reason Applicant requests that Paragraph (D) of the order be deleted.

The Commission finds:

In view of the reasons stated by Applicant in its petition filed herein, it is necessary and appropriate and the public convenience and necessity require that the Commission's order issued April 10, 1963, in Docket No. CP63-184 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued April 10, 1963, in Docket No. CP63-184 is amended to delete therefrom ordering paragraph (D).

(B) Said order is further amended to extend the time within which Applicant is required by paragraph (B) of such order to accept the certificate to and including the 10th day following the issuance of this order.

(C) In all other respects said order shall remain unchanged and in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr, Charles R. Ross, and Harold C. Woodward.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP61-203

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 27, 1963)

On March 12, 1963, Texas Eastern Transmission Corporation (Applicant) filed in Docket No. CP61-203 an application to amend the Commission's order, issued December 17, 1962, 28 FPC 1035, in said docket, to authorize the construction and operation of 20 miles of 24-inch pipeline in lieu of 26 miles of 12¾-inch and 14-inch pipeline authorized by said order, all as more fully set forth in the application to amend.

By the subject order Applicant was authorized, among other things, to construct and operate approximately 26 miles of 12¾-inch and 14-inch lateral pipeline extending from its 36-inch mainline east of Compressor Station 26 to the vicinity of Barnardsville, Morris, Roseland and Hanover, New Jersey, where deliveries would be made to Public Service Electric and Gas Company (Public Service). Through this line Applicant proposed to deliver an additional 30,600 Mcf per day to Public Service. As authorized, the line had a maximum capacity of 73,500 Mcf per day.

Applicant states that authorized deliveries from said lateral have been increased to a total of 73,333 Mcf per day and that it anticipates sizable increases in requirements for the area to be served by said line. Therefore, Applicant requests herein authorization to install the proposed larger 24-inch line which line will have a potential capacity of 350,000 Mcf per day. Applicant states further that construction of the larger line at this time will avoid future expensive rights-of-way and construction costs.

The application shows the cost of the proposed larger line to be $4,886,000 or $1,017,000 more than the estimated cost of the smaller line. However, Applicant states that, even with the subject proposal, the total cost of facilities authorized in this docket will not exceed the total estimated cost since certain actual costs of construction thus far were lower than estimated.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on April 19, 1963 (28 FR 3896). On May 6, 1963, Public Service filed a petition to intervene in this proceeding; however, Public Service states that it supports the subject application and requests intervention only in the event a formal hearing is to be held herein. Inasmuch as no hearing is to be held herein, no further action on Public Service's petition to intervene appears necessary.

No other petition to intervene or protest has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued December 17, 1962, in Docket No. CP61-203 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued December 17, 1962, in Docket No. CP61-203 be and the same is hereby amended to authorize Applicant, Texas Eastern Transmission Corporation, to construct and operate the 20 miles of 24-inch

pipeline in lieu of the 26 miles of 12¾-inch and 14-inch pipeline heretofore authorized herein, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said orded shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP63–147

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued May 27, 1963)

On November 28, 1962, Transcontinental Gas Pipe Line Corporation, (Applicant) filed an application, supplemented on February 4, 1963, pursuant to Section 7(b) of the Natural Gas Act, for authority to abandon certain facilities consisting of 1,175 feet of 4-inch lateral pipeline connecting the Palmetto Field, in St. Landry Parish, Louisiana, with its 30-inch main line. This 4-inch line was constructed to enable Applicant to take gas from reserves owned by the Atlantic Refining Company and Sinclair Oil and Gas Company. The Applicant has shown that the gas reserves dedicated in the contracts are now depleted.

The facilities to be abandoned are to be salvaged.

Pursuant to due notice, a public hearing was held in Washington, D.C., on May 20, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a natural gas company within the meaning of the Natural Gas Act and the facilities hereinabove described were authorized by the Commission in Docket No. G-9162 and are subject to the jurisdiction of the Commission.

(2) The available supply of natural gas from the producers is depleted to extent that further service therefrom is unwarranted. Therefore the present and future public convenience and necessity permits abandonment thereof.

(3) A request made during the public hearing by Staff Counsel for omission of the intermediate decision procedure under Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure was unopposed by any party of record, and not having been denied by the Commission is granted pursuant to Section 1.30(c)(1) of the rules.

The Commission orders:

(A) Applicant be and is hereby permitted to abandon and remove the facilities heretofore described, as more fully described in the application.

(B) Applicant shall within ten days after removal of the said facilities from their emplacement advise the Commission thereof.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SUNRAY DX OIL COMPANY, ET AL., DOCKET NO. G-4281, ET AL.

ORDER INSTITUTING INVESTIGATION AND NOTICE OF APPLICATIONS TO BE HEARD ON A CONSOLIDATED BASIS IN CONJUNCTION THEREWITH

(Issued May 28, 1963)*

Take notice that each of the above producer-applicants has filed an application for a certificate of public convenience and necessity, pursuant to Section 7 of the Natural Gas Act, requesting authorization to sell natural gas in interstate commerce, as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented by the respective applications and amendments thereto, which are on file with the Commission and open to public inspection. Common issues with respect to Btu adjustments are raised by the filings that have been made in conjunction with the afore-mentioned applications. These provisions present many complex and difficult problems that the Commission must resolve in the discharge of its duties and responsibilities under the Natural Gas Act.

The respective producer-applicants propose to sell natural gas for transportation in interstate commerce for resale as indicated below:

Sales to Michigan Wisconsin Pipe Line Company, Various Fields, Harper, Beaver and Woodward Counties, Oklahoma

Price: 17.0¢ Mcf plus Btu adjustment

Docket No.	*Docket No.*	*Docket No.*	*Docket No.*
G-12886**	G-18476	CI60-632	CI61-512
G-12908**	G-18523	CI60-634	CI61-758
G-12972**	G-18630	CI60-663	CI61-954
G-13204**	G-18708**	CI60-667	CI61-992
G-13299**	G-18881**	CI60-704	CI61-1032
G-16462**	G-18883**	CI60-744	CI61-1201 [1]
G-16853**	G-18916**	CI60-781	CI61-1207
G-16878**	G-18933	CI60-785	CI61-1252
G-17260**	G-18977**	CI60-805	CI61-1417 [2]
G-17791	G-18996**	CI60-827	CI61-1422
G-18044	G-19426	CI61-26	CI61-1448
G-18045	G-19526	CI61-28	CI61-1537
G-18117	G-19542**	CI61-30	CI61-1642
G-18176	G-19595	CI61-108	CI61-1659
G-18239	G-19616	CI61-224	CI61-1706
G-18250	CI60-25	CI61-228	CI62-2
G-18332	CI60-214	CI61-235	CI62-228
G-18435	CI60-526	CI61-302	CI62-281
G-18450	CI60-614	CI61-399	CI62-451

*Additional applicants and docket numbers omitted in printing.

**Petition(s) to amend certificate to include additional service. The original application previously authorized.

[1] Does not include petition filed July 27, 1962, to include, among others, leases in Woods County, Oklahoma (Oklahoma "Other") where ceiling rate is 15¢/Mcf.

[2] Mayflo will also sell to Panhandle Eastern Pipe Line Company in this docket.

Continuation of Sales to Michigan Wisconsin Pipe Line Company, Various Fields, Harper, Beaver and Woodward, Counties, Oklahoma

Price: 17.0¢ Mcf plus Btu adjustment

Docket No.	*Docket No.*	*Docket No.*	*Docket No.*
CI62–572	CI62–1073	CI62–1440	CI63–269
CI62–603	CI62–1093	CI62–1441	CI63–346
CI62–721	CI62–1111	CI63–59	CI63–567
CI62–871	CI62–1367	CI63–71	CI63–668
CI62–903	CI62–1439	CI63–80	CP60–116

Sales to Panhandle Eastern Pipe Line Company, Various Fields, Beaver and Texas Counties, Oklahoma

Price: 16 and 17¢/Mcf plus Btu adjustment

Docket No.	*Docket No.*	*Docket No.*	*Docket No.*
CI60–105	CI61–16	CI61–698	CI62–38
CI60–578	CI61–36	CI61–886	CI62–548
CI60–602	CI61–155	CI61–1391	CI62–1228
CI60–711	CI61–260	CI61–1417 [3]	CI63–111
CI60–722	CI60–271	CI61–1453	
CI60–772	CI61–314	CI61–1775	

Sales to Panhandle Eastern Pipe Line Company, Various, Fields, Morton and Meade Counties, Kansas *

Price: 15 and 16¢/Mcf plus But adjustment

Docket No.	*Docket No.*	*Docket No.*	*Docket No.*
G–12325	G–19051	CI60–766	CI61–771 [4]
G–13086*	CI60–361	CI61–198	CI61–1137

Sales to Colorado Interstate Gas Company, Oklahoma Panhandle Area

Price: 15, 16 and 17¢/Mcf plus Btu adjustment

Docket No.	*Docket No.*	*Docket No.*	*Docket No.*
G–8087*	G–16971	CI60–203	CI61–521
G–11122*	G–18065	CI60–301	CI61–540
G–11150	G–18111	CI60–321	CI61–1466
G–12336*	G–19239	CI60–456	CI62–488
G–12353*	G–19688	CI60–471	CI62–688
G–13665	G–19837	CI60–488	CI62–998
G–13929*	G–20101	CI60–584	CI62–1070
G–14953*	G–20250	CI60–590	CI62–1299
G–15521	G–20308	CI61–14	CI62–1332
G–16109	G–20327	CI61–19	CI62–1536
G–16460	CI60–22	CI61–403	CI63–267
G–16529*	CI60–197	CI61–439	CI63–272

*Petition(s) to amend certificate to include additional service. The original application previously authorized.

[3] Mayfo has also applied for authorization in this docket to sell to Michigan Wisconsin Pipe Line Company.

[4] Certificate application CI60–771 also in Texas County, Oklahoma @ 16¢.

Sales to Colorado Interstate Gas Company, Kansas Area

Price: Various prices from 11.5 cents to 17 cents per Mcf plus Btu adjustment

Docket No.	*Docket No.*	*Docket No.*	*Docket No.*
G–10764	G–17777	G–20143	CI61–73
G–12710*	G–18513	G–20486	CI61–272
G–12833	G–19318	CI60–169	CI61–794
G–15519	G–19480*	CI60–269	CI61–1629
G–17222	G–19960	CI60–37	CI62–737

Sales to Northern Natural Gas Company, Various Fields, Beaver and Harper Counties, Oklahoma

Price: 15 and 17¢/Mcf plus Btu adjustment

Docket No.	*Docket No.*	*Docket No.*	*Docket No.*
G–11744*	G–19337	CI60–384	CI61–609
G–13205*	G–19338	CI60–466	CI61–1339
G–14143	G–19421	CI60–712	CI61–1709
G–14979	CI60–144	CI60–773	CI61–1777
G–15291*	CI60–146	CI61–120	CI62–1559
G–16004	CI60–190	CI61–253	CI63–723
G–18288			

Sales to Cimarron Transmission Company, Enville & Marietta Fields, Love County, Oklahoma

Price: 15.0¢/Mcf plus Btu adjustment

Docket No.	*Docket No.*	*Docket No.*	*Docket No.*
G–17015*	CI61–1615	CI62–6	CI62–765
CI60–808	CI61–1666	CI62–571	CI62–811
CI61–1309	CI61–1770	CI62–592	

Sales to Natural Gas Pipeline Company of America, Fields in Woodward County, Oklahoma

Price: 17.0¢/Mcf plus Btu adjustment

Docket No.	*Docket No.*	*Docket No.*
CI61–738	CI61–770	CI61–868
CI61–769	CI61–795	

Sales to Natural Gas Pipeline Company of America, Various Fields, Jack and Wise Counties, Texas

Price: 13 and 14¢/Mcf plus Btu adjustment

Docket No.	*Docket No.*	*Docket No.*
G–4281*	G–19420	CI63–1160
G–14980	CI61–139	CI63–1257
G–15148	CI61–159	CI63–1337

Sales to Transwestern Pipeline Company, Various Fields, Beaver County, Oklahoma

Price: 15 and 17¢/Mcf plus Btu adjustment

Docket No.	*Docket No.*	*Docket No.*
CI61–323	CI61–538	CI61–805
CI61–417	CI61–711	

*Petition(s) to amend certificate to include additional service. The original application previously authorized.

Sales to Transwestern Pipeline Company, Morrow Field, Ochiltree County, Texas

Price: 17¢/Mcf plus Btu adjustment

Docket No.
CI61–713

In virtually every instance set forth above gas is being sold under temporary certificates. The rate schedules under which these sales are being made contain provisions that make the natural gas sold thereunder subject to Btu adjustment for gas having more than 1,000 Btu per cubic foot.

The issue of the ultimate propriety of Btu provisions in producer contracts has not been passed upon by the Commission and even in those instances when the applicability of these provisions has been raised in proceedings that progressed to the final stages of certification, the Commission has seen fit to reserve passing upon such issues and has made the final determination to be rendered in connection therewith subject to its resolution in the rule-making proceedings, Docket No. R-200.[5]

In light of the fact that this large number of proceedings is awaiting disposal and each presents common issues with respect to provisions calling for Btu adjustments in producer contracts, hearing held on these applications on a consolidated record would serve the purpose of affording final disposition to these matters and provide the Commission with a valuable source of information upon which it could predicate some rulings in connection with Docket No. R-200. In order to adduce a complete record and a wide variety of views on the Btu issue from various segments of the industry, we will consolidate with the several producer applications an investigatory proceeding pursuant to Section 14 of the Act and make the pipeline purchasers of the gas subject to the producer applications, parties to this proceeding.

In Appendix (A) attached hereto we have set forth a series of questions with respect to which those pipeline companies made parties to the consolidated hearing will be required to submit testimony under oath. It should be understood that the evidence to be adduced in answer to the questions set forth in Appendix (A) is not intended to restrict the scope of any additional presentation that the parties may desire to make. At this hearing all the parties will be given an opportunity to present evidence in order to show whether the Commission should allow Btu provisions to become fully effective, only partially effective or whether it should reject them completely.

The Commission may also request that the parties to the above-styled proceedings provide it with such additional information that it may subsequently deem necessary in order to enable it to make appropriate determinations with respect to the issues raised in these proceedings.

The Commission finds:

To aid in carrying out its authority and responsibilities under the Natural Gas Act, particularly Sections 7, 14 and 16 thereof, including the prescribing of rules and regulations thereunder, and to obtain information upon which to formulate certain rules, it is appropriate in the public interest that an investigation be instituted with respect to matters involved in provisions contained in certain natural gas producer rate schedules as hereinafter provided.

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[5] *Panhandle Eastern Pipe Line Company, et al.*, Docket No. CP60–103, *et al.*, 27 FPC 35 (Opinion No. 350).
Michigan Wisconsin Pipe Line Company, et al., Docket No. CI61–102, *et al.*, 27 FPC 449 (Opinion No. 353).

The Commission orders:

(A) An investigation be and hereby is insituted into the necessity, propriety and impact of Btu adjustment provisions in producer contracts.

(B) The procedure to be followed in said investigation and the date of the hearings shall be prescribed by subsequent order or orders of the Commission.

(C) A copy of this order be published in the Federal Register and sent to the regulatory and conservation commissions of each of the States, each natural gas company and other interested parties, and such person be invited to file with the Commission, on or before June 24, 1963, statements of their views and suggestions concerning the matters to be covered in this investigation and the procedure which should be followed.

(D) Protests or petitions to intervene may also be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before June 24, 1963.

APPENDIX A

Evidence to be adduced by pipeline companies relating to Btu provisions in producer contracts:

(1) Submit a breakdown of the monthly billing statements for purchases under each producer-applicant's rate schedule in which you are reflected as being the purchaser in the above-styled proceedings. (Provide actual monthly figures for 1960, 1961 and 1962 measured at 14.73 psia.)

(a) For gas that is *not* processed for the removal of liquid hydrocarbons prior to its entry into the main transmission system the following information is required: (conventional field separation is not to be considered as "processing".) Delivery point, weighted average Btu content, total volume and purchase cost, base price, total price with all adjustments itemized.

(b) For gas that is processed for the removal of liquid hydrocarbons prior to its entry into the main transmission system, the breakdown should include the following: plant owner, operator and location, initial delivery point, point where title passes, measurement point for pay, volumes, purchase cost and Btu content at measurement point for pay, base price, total price with all adjustments itemized, breakdown of seller reimbrusements to pipeline for shrinkage, plant fuel and Btu reduction. If the plant operator is responsible to pipeline for these reimbursements the following additional monthly data is required: Total plant inlet and outlet volumes, weighted average inlet and outlet Btu content, total cost of inlet volume to pipeline, unit cost of inlet volume (¢/Mcf), detailed breakdown of basis for plant operator's reimbursements to pipeline for shrinkage, plant fuel and Btu reduction, total cost of outlet volume, unit cost of the outlet volume.

Itemize any charges by the pipeline for transportation, compression and gathering of shrinkage volumes.

(c) Describe any main line processing facilities and show monthly inlet and outlet volumes and average Btu contents.

(2) Submit a flow diagram of suitable scale and detail showing average Btu contents and volumes throughout your pipeline system for the month of July 1962 and a similar diagram for December 1962. Provide explanations of any factors that affect the Btu content of the gas after its entry into the transmission system.

(3) Give average Btu content of gas at each point of delivery to each resale customer.

(4) Describe the price adjustments made by your company for Btu content above or below contract provisions.

(5) The names of all resale customers selling gas at a therm rate and the average rate per therm charged residential and commercial customers. Show volumes by you in 1960, 1961, 1962 to these customers.

(5a) Also give same information for all additional resale customers selling to residential and commercial customers under rates subject to Btu adjustments and briefly indicate nature of the adjustment applicable.

(6) Enumerate the purchase areas as defined by the Commission's Statement of General Policy 61–1 in which you purchase gas for resale in interstate commerce.

(7) In which of the purchase areas defined by the Commission's Statement of General Policy 61–1 do you make a price adjustment for gas that you purchase because its Btu content is above contractual standards.

(8) Give the average Btu content of the gas purchased by your company in each of these areas in the years 1960, 1961 and 1962.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP63–214

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 28, 1963)

On January 29, 1963, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP63–214 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of additional volumes of natural gas to 52 of its existing customers, and the construction and operation of pipeline and compressor faciilties, all as more fully set forth in the application.

Applicant seeks authority to increase the contract demands of 52 of its existing customers in order to meet their requirements for the heating season of 1963–1964. These increases would total an additional 72,088 Mcf of natural gas per day and are based upon a detailed market survey which includes all of the increases in peak-day volumes which Applicant has been requested to serve for the heating season heretofore mentioned. The additional capacity will be obtained partly through increased deliverabililty from Applicant's Leesville and West Greenville storage fields. Applicant proposes to increase the Leesville deliverability to 25,000 Mcf per day from the present capability of 3,500 Mcf per day. Likewise, West Greenville's capability will be increased to 92,000 Mcf per day from the present capability of 85,000 Mcf per day. The Leesville increase will be obtained through drilling new wells and increasing the volumes of gas in the reservoir. West Greenville's increase requires no additional development, but represents actual experience as to the field's capability.

In order for Applicant to increase deliveries to the involved customers, it seeks authority to construct and operate the following specific facilities: (1) approximately 39.70 miles of 26-inch pipeline loops located in the States of Louisiana, Indiana, and Ohio; (2) approximately 38.07 miles of 30-inch pipeline loops located in the States of Louisiana, Mississippi, Tennessee, and Kentucky; (3) one river crossing under the Mississippi River near Greenville, Mississippi, consisting of approximately 2.39 miles of 36-inch pipeline and 1.27 miles of 30-inch pipeline; (4) one 1,100 horespower compressor station at Leesville, Indiana; and (5) one 1,500 horsepower compressor unit at the Jeffersontown, Kentucky, compressor station.

The application shows that the proposed service will not require a change in Applicant's rates.

The estimated cost of the proposed facilities is $12,610,000 to be immediately financed from funds on hand and short-term bank loans, and later replaced with long-term financing.

Pursuant to due notice, a public hearing was held in Washington, D.C., on May 14, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application has been received, however, United Cities Gas Company, the Pennsylvania Public Utility Commission, Ohio Fuel Gas Company, and Mississippi Valley Gas Company all made timely filings of either a Notice of Intervention or Petitions to Intervene seeking, among other things, to preserve their rights to enter the proceeding should a formal hearing be held. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation with its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the sale and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The semi-annual reports and pressure limitations of 718 psig for the West Greenville storage field, as directed by the Commission's Order of July 22, 1960, in Docket No. G–19510, shall be continued. The authorized withdrawal volumes of 85,000 Mcf per day shall be increased to 92,000 Mcf per day. Such pressure and withdrawal limitations shall not be exceeded without further authorization by the Commission.

(6) The quarterly reports for the Leesville storage field, as directed by the Commission's Order of July 2, 1962, in Docket No. CP62–195, shall be continued. The Leesville storage field inventory shall not exceed a total of 3,700,000 Mcf, and withdrawal volumes shall not exceed 25,000 Mcf per day, without further authorization by the Commission.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Texas Gas Transmission Corporation, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The semi-annual reports and pressure limitations of 718 psig for the West Greenville storage field, as directed by the Commission's Order of July 22, 1960, in Docket No. G–19510, shall be continued. The authorized withdrawal volumes of 85,000 Mcf per day shall be increased to 92,000 Mcf per day. Such pressure and withdrawal limitations shall not be exceeded without further authorization by the Commission.

(C) The quarterly reports for the Leesville storage field, as directed by the Commission's Order of July 2, 1962, in Docket No. CP62–195, shall be continued. The Leesville storage field inventory shall not exceed a total of 3,700,000 Mcf, and withdrawal volumes shall not exceed 25,000 Mcf per day, without further authorization by the Commission.

(D) The certificate issued by paragraph (A) above and rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(E) The facilities hereby authorized in paragraph (A) above shall be constructed and placed in actual operation, and the safe and delivery of natural gas likewise authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TRANSWESTERN PIPELINE COMPANY, ET AL., DOCKET NO. G–20464, ET AL.

ORDER GRANTING MOTION FOR MODIFICATION OF PRESIDING EXAMINER'S SCHEDULE FOR HEARING, CROSS-EXAMINATION AND SERVICE OF REBUTTAL TESTIMONY

(Issued May 28, 1963)

Pursuant to Section 1.28 of the Rules of Practice and Procedure, the presiding examiner referred to the Commission on May 14, 1963, (as supplemented on May 16, 1963) an appeal by Colorado Interstate Gas Company (CIG) of his ruling denying the motions made by CIG and El Paso Natural Gas Company (El Paso) for modification of the schedule set by the examiner's notice of April 30, 1963, for hearing, cross-examination and service of rebuttal testimony. CIG seeks approximately a 30-day extension of the schedule. Transwestern Pipeline Company orally on the record opposed the modification and on May 20, 1963, filed a reply in opposition to the appeal of CIG.

Having considered the various arguments presented, we believe, since CIG and El Paso were not permitted to intervene until these proceedings had been in hearing for more than a month, that the examiner's schedule is somewhat restrictive in that it does not afford CIG and El Paso sufficient time to adequately prepare for cross-examination and their rebuttal cases. The motion of CIG for modification of the schedule is in the public interest and should be granted.

The Commission finds:

Good and sufficient cause does exist for granting the motion of CIG for modification of the hearing schedule in these proceedings.

The Commission orders:

The motion of Colorado Interstate Gas Company for modification of the hearing schedule in these proceedings is granted and the hearing schedule is hereby modified as follows:

On June 4, 1963, service by CIG of the description of the areas of cross-examination and the witnesses required, if any.

On June 11, 1963, the hearing shall reconvene at 10:00 a.m. (EDST) in a hearing room of the Federal Power Commission, Washington, D.C., for the limited purpose of such cross-examination, if any.

On June 18, 1963, service by CIG and El Paso of the general scope and tenor of their rebuttal evidence.

On June 27, 1963, service by CIG and El Paso of their rebuttal evidence.

On July 9, 1963, the hearing shall reconvene at 10:00 a.m. (EDST) in a hearing room of the Federal Power Commission, Washington, D.C., for the purpose of cross-examining the rebuttal evidence of all the interveners and the staff.

VILLAGE OF CLAY CITY, ILLINOIS, DOCKET NO. CP63-49

ORDER ADOPTING INITIAL DECISION OF PRESIDING EXAMINER

(Issued May 29, 1963)*

Syllabus

1. Commission *directs* Trunkline Gas Company, under Section 7(a) of the Natural Gas Act, to establish physical connection of its facilities with facilities proposed to be constructed by Applicant, and sell and deliver natural gas to Applicant. P. 1090.

Orville N. Freeman for Village of Clay City, Illinois.
J. William Via, Jr. for Trunkline Gas Company.
David B. Ward for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

By initial decision issued April 29, 1963, the presiding examiner in the above-entitled proceeding issued an order directing Trunkline Gas Company to establish physical connection of its natural gas transportation facilities with the natural gas facilities proposed to be constructed and operated by the Village of Clay City, Illinois, (Clay City) and to sell and deliver up to 595 Mcf of natural gas per day to Clay City for resale.

The time for filing exceptions to said decision has passed and no exceptions having been filed, the matter is now properly before us.

The Commission orders:

The initial decision of the presiding examiner issued on April 29, 1963, is adopted as the decision of the Commission in this proceeding effective as of the date of this order.

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*Initial decision appears on p. 1088.

INITIAL DECISION

UPON AN APPLICATION FILED PURSUANT TO SECTION 7(A) OF THE NATURAL GAS ACT

(Issued April 29, 1963)

JENSCH, *Presiding Examiner:* This is a proceeding under Section 7(a) of the Natural Gas Act (Act) upon an application filed by the Village of Clay City, Illinois (Clay City or Applicant) for an order directing Trunkline Gas Company (Trunkline), "a natural-gas company" under the Act, to connect its facilities with the facilities which Clay City proposes to construct and to sell and deliver up to 595 Mcf of natural gas per day to Clay City for local distribution. Clay City is a municipal corporation incorporated under the laws of the State of Illinois and is legally authorized to engage in the local distribution of natural gas.

Trunkline, in its answer to Clay City's application, questioned the need for a 400 psig inlet pressure and also questioned the economic feasibility of the project as proposed. Trunkline did not assert that the requested service would burden its pipeline service [1] nor adversely affect its existing customers.

Clay City presented three witnesses in support of its application. Neither the staff nor Trunkline presented witnesses but both cross-examined Clay City's witnesses. The Village of Clay City is principally an agricultural marketing and trading center with a population of approximately 1,252. Clay City is located some eight miles east of Flora, Illinois, in Clay County. Clay City owns and operates its own water and sewage facilities which were constructed with funds derived from the sale of revenue and tax obligations. Clay City has never defaulted on any of its obligations. Clay City does not have gas service, except for bottled gas. As evidence that the citizens of Clay City desire a municipal gas system, the voters have authorized the issuance of $350,000 Gas Public Utility Certificates.

Upon the basis of recommendations of an engineering consultant, Clay City proposes to construct approximately 9 miles of 3'' I.D. high pressure lateral to connect Trunkline's transmission line with a distribution system to be built and operated by Clay City. The system will include all equipment and appurtenances necessary to serve the Village and will be installed under the standards of the American Gas Association and A.S.T.M. The system as designed will supply the Village with an estimated Maximum Daily Demand of 595 Mcf of gas, an Hourly Demand of 37 Mcf, and is capable of delivering approximately 200 Mcf of gas per day in excess of the estimated third year demands. It appears from the evidence that the Applicant does not need a 400 psig inlet pressure, as originally requested, but that the 400 psig was considered a maximum design pressure for future expansion. A 200 psig would supply more than the estimated requirements of the Applicant, therefore, the request for a gas allocation was changed to 200 psig.[2]

The evidence presented was that a survey was made of the Village to determine the number, location and types of buildings, the layout of streets and alleys, general types and sizes of domestic, commercial and industrial users, and the different classes of firing methods. Based on this survey, estimates were

[1] Section 7(a) of the Natural Gas Act provides that the Commission may direct a natural gas company to extend its transportation facilities to provide service, such as here sought, "* * * if the Commission finds that no undue burden will be placed upon such natural gas company, thereby: *Provided*, That the Commission shall have no authority * * * to compel * * * physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers."

[2] Trunkline states in its brief that it * * * would have no particular objection to the 200 psig inlet pressure figure if the project were economically feasible * * *."

made of the number of proposed gas users, the amount of gas required by each and the total gas sales per year.

The quantities of equipment were determined from a large scale map of the Village on which the engineering diagram of the proposed gas system had been placed. The unit prices for the equipment were taken from recent competitive bids of projects [3] in the area similar to Clay City, but were increased 25% to cover any possible changes in construction costs.

Estimates are that the annual gross revenue and the annual net revenue had been calculated and based on the issuance of $320,000 worth of 30-year bonds at five percent (5%), the schedule furnished by the Applicants financial consultant, the total estimated revenue is shown as in excess of twice the estimated bond and interest requirements. On a 20-year schedule the coverage ratio was 1.83.

A proposed gas rate was also furnished Clay City by the engineering consultant. This rate was based on the cost of gas in comparison with present fuels and had been designed to be competitive with other fuels but capable of raising sufficient revenues to meet the requirements. A cost comparison between natural gas and other fuels was also presented. The opinion was submitted that the project as proposed by the Applicant is feasible and would prove to be profitable.

The evidence of financial feasibility of the project was presented by a representative of a securities organization who has had previous experience with this kind of project. He testified that in appraising the feasibility of the Applicants' project, the assumption had been made that a bond issue in the principal amount of $320,000 was required. The actual amount of the bonds to be issued, however, would not be finally determined until the construction bids were received. It is expected that a lesser amount will be issued.[4] In any event, even if Clay City were required to issue $350,000 in bonds, the debt coverage ratio would be 2.1 on a 30-year basis or 1.7 on a 20-year basis.

By way of summary, and supplementary to the foregoing findings and conclusions, also based upon a consideration of the entire record, the evidence adduced and the briefs filed, are the following findings and conclusions:

1. Trunkline Gas Company, a Delaware corporation, having its principal place of business at Houston, Texas, is a "natural gas company" within the meaning of the Natural Gas Act, as amended, and as heretofore found and determined by the Commission.

2. The Village of Clay City, Illinois, is a municipal corporation legally authorized to construct, own and operate a local gas distribution system.

3. The sale by Trunkline Gas Company of the quantities of natural gas sought for and by the Village of Clay City, Illinois, in an amount up to 595 Mcf of natural gas per day as reflected in this proceeding, and the construction and operation of the lateral pipeline facilities needed for said sale of natural gas in interstate commerce by Trunkline Gas Company, subject to the jurisdiction of the Commission, are required by the public convenience and necessity and an order directing such sale should be issued as hereinafter provided.

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[3] Data submitted by Clay City after the hearing, pursuant to a stipulation of all participants, was identified by a number reserved as Exhibit 3, which is received in evidence.

[4] Trunkline suggests that any margin between actual construction costs and the total bond issue will be absorbed as financing costs to the full limit permitted by Illinois law. Trunkline also implies its belief that this financing cost is too high and burdens the distribution customers with an inability to meet the costs of competitive fuels. No evidence was offered to support this view. Trunkline, in its brief, requests that this application by Clay City be denied without prejudice to a further application in the future which can be "adequately supported". Trunkline's request is denied.

4. The service hereinafter ordered to be rendered and the pipeline facilities to be constructed by Trunkline Gas Company will not place any undue burden upon said natural gas company, nor require it to enlarge its facilities nor impair its ability to render adequate service to its existing customers.

5. The Village of Clay City, Illinois, for the service sought in this proceeding should be prepared to receive service from Trunkline Gas Company within one year from the date of the issuance of the Order herein, and Trunkline Gas Company should be directed to provide that service within that period of time.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission on appeal, or review by the Commission on its own motion, as provided in its Rules of Practice, that:

(A) Trunkline Gas Company be and the same hereby is directed to establish physical connection of its natural gas transportation facilities with the natural gas facilities proposed to be constructed and operated by the Village of Clay City, Illinois, as hereinbefore described and more fully set forth in the record in this proceeding, and to sell and deliver a maximum up to 595 Mcf of natural gas per day to the Village of Clay City, Illinois, all as fully described in the record in this proceeding and the findings of this decision.

(B) The date of commencement of service to the Village of Clay City, Illinois, shall be reported by Trunkline Gas Company in writing and under oath within 30 days after the commencement of such service. The Village of Clay City, Illinois, should be prepared to receive service from Trunkline Gas Company within one year from the date of the issuance of the Order herein, in accordance with Section 157.20(b) of the Commission's Regulations.

SAMUEL W. JENSCH,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MICHAEL T. HALBOUTY, ET AL., DOCKET NO. G–17124

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF CONTRACT AMENDMENT, REQUIRING REFUND, AND TERMINATING PROCEEDING

(Issued May 29, 1963)

On April 22, 1963, Michael T. Halbouty, *et al.* (Halbouty) filed an Offer of Settlement in the above-designated rate suspension proceeding, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. This proceeding relates to the jurisdictional sale of natural gas by Halbouty, under its FPC Gas Rate Schedule No. 5, to Tennessee Gas Transmission Company (Tennessee) from the Eagle Lake Field, Colorado County, Texas (Railroad Commission District No. 3).

The following table sets forth the data pertinent to the proceeding involved herein.

Docket No.	*Rate schedule No.*	*Supplement No*	*Effective rate*	*Date effective subject to refund*
G–17124	5	1	[1] 15.95016	June 1, 1959

[1] Gas delivered under the rate schedule is of non-pipeline quality and the price is subject to a reduction of 0.21931 cents per Mcf for dehydration.

Under the terms of the offer, Halbouty proposes to delete the favored-nation, price-redetermination and present periodic escalations and to substitute therefor a revised schedule of 1 cent per Mcf escalation at five year intervals, commencing January 1, 1964. Halbouty proposes to establish a settlement rate of 14.6 cents per Mcf,[1] inclusive of present tax reimbursement. Further, Halbouty proposes to refund to Tennessee all monies collected in excess of 14.6 cents per Mcf in Docket No. G–17124.

In support of its offer, Halbouty cites the deletion of the favored-nation and price redetermination provisions from its gas purchase contract with Tennessee, and states that such provisions were important elements of consideration required by Halbouty under the contract for the long term commitment of its gas reserves to the performance of the contract. Tennessee has concurred in the offer and has agreed to execute the contract amendment provided for therein. No protest has been received from any party interested in this proceeding.

Since the proposed settlement rate of 14.6 cents per Mcf is acceptable under the provisions of the Second Amendment [2] to the Commission's Statement of General Policy No. 61–1,[3] for the jurisdictional sales of natural gas in Texas Railroad Commission District No. 3, it is believed that the public interest will best be served by accepting Halbouty's proposed settlement as hereinafter set forth. The proposed settlement rate should be made effective as of the date of issuance of this order.

However, we desire to make it clear that acceptance of the Offer of Settlement shall not be construed as approval of any future increased rate proposed by Halbouty.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the Offer of Settlement filed by Halbouty with the Commission on April 22, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by Halbouty with the Commission on April 22, 1963, is hereby approved in accordance with the provisions of this order.

(B) Halbouty shall file, within 30 days from the date of issuance of this order a notice of change providing for the 14.6 cents per Mcf settlement rate, including present tax reimbursement, subject to a reduction of 0.21931 cents per Mcf for dehydration as provided in Halbouty's subject rate schedule, and a contractual amendment to its FPC Gas Rate Schedule No. 5, which Halbouty shall execute with Tennessee in conformity with Halbouty's Offer of Settlement in all respects. The notice of change and contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Within 30 days from the date of issuance of this order, Halbouty shall refund to Tennessee all amounts collected under its FPC Gas Rate Schedule No. 5, in Docket No. G–17124, in excess of the settlement rate, together with simple interest at the rate of 6% per annum, from the date of receipt of such excess amounts by Halbouty to the date of refund. Halbouty shall bear all costs incidental to the making of such refunds.

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[1] The settlement rate is subject to reduction in the amount of the dehydration charge as provided in the rate schedule.

[2] Issued December 20, 1960, 24 FPC 1107; amended by Order No. 264, in Docket No. R–234, issued March 27, 1963, 29 FPC 589.

[3] Issued September 28, 1960, 24 FPC 818 (18 CFR, Chapter 1, Part 2, Section 2.56).

(D) Within 45 days from the date of issuance of this order, Halbouty shall report to the Commission in writing the details of its calculations resulting in refund ordered pursuant to paragraph (C) above, together with a copy of a release from Tennessee with respect to such refund.

(E) Upon notification by the Secretary of the Commission that Halbouty has complied with the terms and conditions of the order, the rate and charge of 14.6 cents per Mcf, including present tax reimbursement, as specified in the Offer of Settlement, subject to a reduction of 0.21931¢ per Mcf for dehydration as provided in Halbouty's subject rate schedule, shall be effective as of the date of issuance of this order, the above-designated proceeding shall be deemed terminated, and Halbouty's refund obligation with respect to the above-designated proceeding shall be deemed to be discharged.

(F) The acceptance of this Offer of Settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending or hereafter instituted by or against Halbouty.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

HASSIE HUNT TRUST, DOCKET NO. G–18093

ORDER ACCEPTING OFFER OF SETTLEMENT AND TERMINATING PROCEEDING

(Issued May 29, 1963)

On April 11, 1963, Hassie Hunt Trust (Hunt) filed an Offer of Settlement in the above-designated rate suspension proceeding, pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure. This proceeding relates to the jurisdictional sale of natural gas by Hunt, under its FPC Gas Rate Schedule No. 2, to Texas Eastern Transmission Corporation (Texas Eastern) from the Southwest Speaks Field, Lavaca County, Texas (Railroad Commission District No. 2).

The following table sets forth the data pertinent to the proceeding involved herein.

Docket No.	*Rate schedule No.*	*Supplement No.*	*Effective rate*	*Date effective subject to refund*
G–18093	2	12	[1] 13.8733	Aug. 23, 1959

[1] At 14.65 psia.

In its Offer of Settlement, Hunt proposes to delete from the contract (1) the present periodic price escalations, (2) the favored-nations clause, (3) the price-redetermination provision, and provide instead for five-year periodic increase of 0.5 cent per Mcf beginning on February 5, 1963.

Texas Eastern has joined in the Offer of Settlement and approves the proposed contractual amendments. No objection to the proposed settlement has been received from any interested party.

Since the proposed settlement rate of 13.8733 cents per Mcf, inclusive of tax reimbursement, is acceptable under the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1 (18 CFR, Chapter I, Part 2, Section 2.56) issued December 20, 1960 (24 FPC 1107) for the jurisdictional sale of natural gas in Texas Railroad Commission District No. 2, it appears that the public interest will best be served by accepting Hunt's proposed settlement.

Because the settlement rate is the same as the increased rate in the above-designated proceeding, there are no refunds involved herein.

We desire to make it clear that acceptance of this Offer of Settlement shall not be construed as approval of any future increased rates proposed by Hunt under the periodic escalation provision or otherwise.

The Commission finds:

The proposed settlement on the basis described herein, as more fully set forth in the Offer of Settlement filed by Hunt on April 11, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved by the Commission and made effective as hereinafter ordered.

The Commission orders:

(A) The proposed Offer of Settlement filed by Hunt with the Commission on April 11, 1963, is hereby approved in accordance with the provisions of this order.

(B) Hunt shall file, within 30 days from the date of issuance of this order, a contractual amendment to its rate contract with Texas Eastern in conformity with Hunt's Offer of Settlement. The contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Upon notification by the Secretary of the Commission that Hunt has complied with the terms and conditions of this order, the rate and charge of 13.8733 cents, inclusive of present tax reimbursement, specified in the Offer of Settlement, shall continue in effect without obligation to refund as of the date of issuance of this order, the above-designated proceeding shall be terminated, and Hunt's refund obligation with respect to the above-designated proceeding shall be deemed to be discharged.

(D) The acceptance of this Offer of Settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending or hereafter instituted by or against Hunt.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

WILLIAM HERBERT HUNT TRUST ESTATE, DOCKET NO. G–18091

ORDER ACCEPTING OFFER OF SETTLEMENT AND TERMINATING PROCEEDING

(Issued May 29, 1963)

On April 11, 1963, William Herbert Hunt Trust Estate (Hunt) filed an Offer of Settlement in the above-designated rate suspension proceeding, pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure. This proceeding relates to the jurisdictional sale of natural gas by Hunt, under its FPC Gas Rate Schedule No. 2, to Texas Eastern Transmission Croporation (Texas Eastern) from the Arneckville Field, DeWitt County, Texas (Railroad Commission District No. 2).

The following table sets forth the data pertinent to the proceeding involved herein.

Docket No.	*Rate schedule No.*	*Supplement No.*	*Effective rate*	*Date effective subject to refund*
G–18091	2	11	[1] 13.8733	Aug. 23, 1959

[1] At 14.65 psia.

In its Offer of Settlement, Hunt proposes to delete from the contract (1) the present periodic price escalations, (2) the favored-nations clause, (3) the price-redetermination provision, and provide instead for five-year periodic increases of 0.5 cents per Mcf beginning on February 5, 1963.

Texas Eastern has joined in the Offer of Settlement and approves the proposed contractual amendments. No objection to the proposed settlement has been received from any interested party.

Since the proposed settlement rate of 13.8733 cents per Mcf, inclusive of tax reimbursement, is acceptable under the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1 (18 CFR, Chapter I, Part 2, Section 2.56) issued December 20, 1960 for the jurisdictional sale of natural gas in Texas Railroad Commission District No. 2, it appears that the public interest will best be served by accepting Hunt's proposed settlement.

Because the settlement rate is the same as the increased rate in the above-designated proceeding, there are no refunds involved herein.

We desire to make it clear that acceptance of this Offer of Settlement shall not be construed as approval of any future increased rates proposed by Hunt under the periodic escalation provision or otherwise.

The Commission finds:

The proposed settlement on the basis described herein, as more fully set forth in the Offer of Settlement filed by Hunt on April 11, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved by the Commission and made effective as hereinafter ordered.

The Commission orders:

(A) The proposed Offer of Settlement filed by Hunt with the Commission on April 11, 1963, is hereby approved in accordance with the provisions of this order.

(B) Hunt shall file, within 30 days from the date of issuance of this order, a contractual amendment to its rate contract with Texas Eastern, which Hunt shall execute with Texas Eastern in conformity with Hunt's Offer of Settlement. The contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Upon notification by the Secretary of the Commission that Hunt has complied with the terms and conditions of this order, the rate and charge of 13.8733 cents, inclusive of present tax reimbursement, specified in the Offer of Settlement, shall continue in effect without obligation to refund as of the date of issuance of this order, the above-designated proceeding shall be terminated, and Hunt's refund obligation with respect to the above-designated proceeding shall be deemed to be discharged.

(D) The acceptance of this Offer of Settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending or hereafter instituted by or against Hunt.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

INDIANA & MICHIGAN ELECTRIC COMPANY, DOCKET NO. E–7089

ORDER DENYING MOTIONS

(Issued May 29, 1963)

On April 16, 1963, 29 FPC 746, the Commission issued an order directing the Indiana & Michigan Electric Company (Company) to show cause why it should

not file its rate schedules for service to its wholesale for resale customers in the states of Indiana and Michigan in accordance with Section 205 of the Federal Power Act. On May 3, 1963, the Public Service Commission of Indiana filed a motion for a concurrent hearing on our order to show cause, reserving its right to intervene in accordance with our Rules and Regulations and requesting a continuance for the purpose of providing adequate time to the Indiana Commission for investigation and review. On May 6, 1963, the Company responded to the order to show cause requesting, for the reasons set forth in its answer, that the order to show cause be vacated.

The Indiana Commission's motion for a concurrent hearing states that this proceeding raises the question of its right to exercise its jurisdiction over the wholesale sales for resale within the state of Indiana, alleging that its jurisdiction to do so has never before been contested. It is true that the Federal Power Commission has not previously initiated a proceeding to require the Company to file its wholesale rate schedules, although the Company was first requested to do so as early as 1937. However, since this proceeding concerns the requirements of the Federal Power Act and not the provisions of the Company's contracts for service to wholesale customers, we do not believe that a concurrent hearing would be helpful. A concurrent hearing on such a matter has previously resulted in unnecessary, multiple litigation. *United States* v. *Public Utilities Commission of California*, 345 U.S. 295 (1953). This is not to say that in future proceedings concerning rates of the Company, the concurrent hearing procedure may not be appropriate. We, therefore, deny the motion of the Indiana Commission, but shall treat its moving papers as a notice of intervention and shall hereinafter grant the request for a continuance in order to provide adequate time for investigation and review.

The request of the Company that the Commission vacate its order of April 16, is predicated upon legal conclusions based, in large measure, upon factual allegations which the Commission is unprepared to accept unless they are established at a hearing. The Commission's original order directed a hearing for just this purpose. We are therefore denying the motion to vacate our order of April 16, 1963 at this time and shall decide the issues raised by the motion upon the record after the hearing.

We have been informed by staff that a representative of the Company, as well as the State Commission, feels that additional time is required to prepare for the hearing. A reasonable opportunity should certainly be afforded to prepare the material which the parties wish to present.

We have granted more than the full time requested in order that the hearing may proceed without further adjournment.

The Commission further finds:

The public interest will not be impaired by granting a reasonable adjournment of the hearing date as hereinafter ordered.

The Commission orders:

(A) The motion of the Public Service Commission of Indiana and constituent members for concurrent hearing is denied. The moving papers shall be accepted as a notice of intervention in this proceeding by the Public Service Commission of Indiana.

(B) The request of the Indiana & Michigan Electric Company that the order to show cause issued April 16, 1963 be vacated, is denied.

(C) The hearing previously ordered to commence on June 3, 1963, is hereby adjourned to commence on July 29, 1963, the order of April 16, 1963, being otherwise affirmed in all respects.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP62-121

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 29, 1963)

On December 26, 1962, Natural Gas Pipeline Company of America (Applicant) filed an application to amend further the Commission's order, issued May 18, 1962, 27 FPC 997, in Docket No. CP62-121 to authorize the sale and delivery of an additional 2500 Mcf of natural gas per day to Interstate Power Company (Interstate) and an additional 250 Mcf of natural gas per day to Monarch Gas Company (Monarch), all as more fully set forth in the application to amend.

The subject order authorized Applicant to construct and operate certain facilities and to sell and deliver increased volumes of natural gas to Interstate and Monarch as well as to other existing customers. The application shows that Applicant presently sells a daily contract quantity of 17,734 Mcf and 2,190 Mcf to Interstate and Monarch, respectively.

The proposed additional sale to Interstate will be utilized to meet the increased requirements of a chemical company and the additional sale to Monarch will be utilized to meet the increased requirements of a brick and tile manufacturer.

Applicant states that no new facilities will be necessary to render the proposed additional service.

By letter, dated March 13, 1963, Applicant was issued a temporary certificate to render the proposed service to Monarch.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on April 9, 1963 (28 F.R. 3462). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued May 18, 1962, in Docket No. CP62-121 be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued May 18, 1962, in Docket No. CP62-121 be and the same is hereby further amended to authorize Applicant, Natural Gas Pipeline Company of America to sell and deliver an additional 2,500 Mcf of natural gas per day to Interstate and an additional 250 Mcf of natural gas per day to Monarch, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NEW YORK STATE NATURAL GAS CORPORATION, DOCKET NO. CP63–253

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 29, 1963)

On March 11, 1963, New York State Natural Gas Corporation (Applicant) filed an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of an additional connection with the system of Rochester Gas and Electric Corporation, an existing customer.

The gas requirements of Rochester's service area, particularly east of the City of Rochester, are growing rapidly. Applicant's existing transmission line delivering gas into Rochester's system at Caledonia just south of the City, is loaded to capacity. The proposed new connection, near the eastern part of Rochester's system, will enable New York Natural to shift part of its deliveries to Rochester from Caledonia to the new connection at Tyre, on Applicant's Phelps line. This will help Rochester serve its fast-growing eastern service area and also provide relief to New York Natural's facilities connecting with Rochester at Caledonia. The new connection will also make it unnecessary for Applicant to expand such facilities at considerable cost.

The estimated cost of the proposed facilities including meter and regulator is $50,690 which will be financed from funds on hand.

No change in service or rates is involved in this proposal.

Pursuant to due notice, a public hearing was held in Washington, D.C., on May 13, 1963, with respect to the matters involved in and the issues presented by the application, as supplemented, herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, New York State Natural Gas Corporation, is a natural gas company within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 27, 1942, Docket No. G–312 (3 FPC 844).

(2) The facilities hereinbefore described, as more fully described in the application, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act

and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, New York State Natural Gas Corporation, to construct and operate the proposed facilities and to transport and sell natural gas as hereinbefore described, all as more fully described in the application, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

CITY OF SEATTLE, WASHINGTON, PROJECT NO. 2144

ORDER APPROVING REVISED PROJECT EXHIBITS AND ADJUSTING AUTHORIZED INSTALLED CAPACITY

(Issued May 29, 1963)

On October 10, 1962, the City of Seattle, licensee for Project No. 2144, filed for Commission approval revised Exhibit L drawings and revised Exhibit M, in compliance with Article 38 of the license, issued July 10, 1961 (26 FPC 54).

The license presently describes the underground powerhouse as containing six 90,000 kilowatt generating units totaling 540,000 kilowatts initially, with provision for three additional future units. The revised Exhibit L drawings and revised Exhibit M specify an underground powerhouse containing four 137,750 kilowatt generating units totaling 551,000 kilowatts initially, with provision for two additional future units. The initial and ultimate installed capacities of the project will, therefore, be increased by 11,000 kilowatts and 16,500 kilowatts, respectively, by the installation of fewer but larger units, without an increase in the total hydraulic capacity of the turbines. Our approval of the revised exhibits showing the increased generating capacities will result in an increase in the annual charges now fixed in the license based upon the present capacities.

We are not at this time approving such of the revised Exhibit L drawings as relate to the revised Arch Dam and to the surface excavation for the Arch Dam, inasmuch as further investigations relating to the structural design of that dam are in process. The licensee expects to submit within the next few months all of the information requested by our staff on the revised Arch Dam and the surface excavation.

The Commission finds:

(1) The following described revised Exhibit L drawings and revised Exhibit M conform to the Commission's rules and regulations and should be approved as part of the license for the project:

Exhibit L–B:

Sheet 1 (FPC No. 2144–44) entitled "General Plan"

Sheet 4 (FPC No. 2144–47) entitled "River Diversion"

Sheet 6 (FPC No. 2144–49) entitled "Power Plant—Transverse Section"

Sheet 7 (FPC No. 2144–50) entitled "Power Plant—Intake Tunnels and Gate Gallery"

Sheet 8 (FPC No. 2144–51) entitled "Power Plant—Main and Generator Floors"

Sheet 9 (FPC 2144–52) entitled "Power Plant—Turbine Floor and Lower Galleries"

Sheet 10 (FPC No. 2144–53) entitled "Power Plant—Longitudinal Sections"

Exhibit M:

"General Description of Mechanical, Electrical and Transmission Equipment" in six sheets, filed October 10, 1962.

(2) The following described exhibits, which are now part of the license and which have been superseded, should be eliminated from the license:

Exhibit L–A:	*FPC No*
Sheet 3	2144–27
Sheet 4	2144–28
Sheet 8	2144–31
Sheet 10	2144–33
Sheet 11	2144–34
Sheet 12	2144–35

Exhibit M:

Filed July 29, 1957, and February 8, 1960.

(3) The presently authorized installed capacity of the project for the purpose of computing the capacity component of the administrative annual charge is by this order increased from 720,000 horsepower to 734,700 horsepower, and the annual charge for reimbursing the United States for the costs of administration of Part I of the Federal Power Act, based on such capacity, is reasonable as hereinafter provided.

The Commission orders:

(A) The revised Exhibit L drawings and revised Exhibit M, described in finding (1) above are hereby approved as part of the license for Project No. 2144, and the exhibits described in finding (2) above as being superseded are hereby eliminated from the license for the project.

(B) Article 35 of the license for the project is hereby amended, effective as of January 1, 1963, to show 734,000 horsepower as the authorized installed horsepower capacity of the project.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. G–16842; TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP60–94; TENNESSEE NATURAL GAS LINES, INC., DOCKET NO. CP61–27; MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. CP62–116; ALABAMA-TENNESSEE NATURAL GAS COMPANY, DOCKET NO. CP62–133; CITY OF MARSHALL, ILLINOIS, DOCKET NO. CP62–187; CITY OF CASEY, ILLINOIS, DOCKET NO. CP62–188; CITY OF MARTINSVILLE, ILLINOIS, DOCKET NO. CP62–189.

ORDER SEVERING THE REQUESTS OF THE CITIES OF MORGANTOWN, KENTUCKY AND GRANDVIEW, INDIANA FOR SERVICE AND DIRECTING CONNECTION OF FACILITIES

(Issued May 29, 1963)

On January 15, 1962, February 26, 1962, and March 8, 1962, the Commission issued orders whereby the above-styled proceedings were consolidated for purposes of hearing. A hearing was held in connection with such consolidated proceedings and concluded on March 30, 1962. In the light of the numerous and complex issues raised in these proceedings, a final determination has not as yet been rendered in connection therewith.

Among the parties to such proceedings are the communities of Morgantown, Kentucky and Grandview, Indiana, which are seeking on order of the Commission, in the nature of an order pursuant to Section 7(a) of the Natural Gas Act, directing Midwestern Gas Transmission Company (Midwestern) to make physical connection of its facilities with the facilities these communities propose to construct to deliver natural gas for resale for ultimate public consumption.

The total maximum daily requirements of the Cities of Morgantown, Kentucky and Grandview, Indiana are relatively small and the effect that the attachment of these customers will have on Midwestern's over-all gas requirements will be *de minimis*.[1]

Before the Cities of Grandview, Indiana and Morgantown, Kentucky can undertake construction of proposed distribution facilities they must be assured of a gas supply to meet the requirements of the consumers they propose to serve. It is important that action be taken by the Commission so that if a favorable determination is made, the cities may have adequate time to construct the proposed facilities prior to the oncoming winter heating season on their projects may have to be put over for a considerable length of time.

In view of the fact that hearings have been held and concluded with respect to the above-styled proceedings and there is no opposition to the requests made by the Cities of Grandview, Indiana and Morgantown, Kentucky, the Commission is of the opinion that the consideration of their requests for service should be severed from the other issues and matters presented in the above-styled proceedings in order to expedite final determination.

The Commission finds:

(1) The public convenience and necessity require that the requests for service made by the Cities of Morgantown, Kentucky and Grandview, Indiana in these consolidated proceedings be considered separately from other issues and matters presented in such consolidated proceedings.

[1] The total maximum daily authorization requested by these cities amounts to 861 Mcf.

(2) These communities have shown their requests for service from Midwestern should be granted and that such service is required by the present and future public convenience and necessity.

The Commission orders:

(A) Midwestern Gas Transmission Company is hereby directed to establish and maintain physical connection of its facilities with the facilities to be constructed by the City of Morgantown, Kentucky and to deliver and sell through such connection natural gas not to exceed a maximum daily volume of 556 Mcf.

(B) Midwestern Gas Transmission Company is hereby directed to establish and maintain physical connection of its facilities with the facilities to be constructed by the City of Grandview, Indiana and to deliver and sell through such connnection natural gas not to exceed a maximum daily volume of 305 Mcf.

(C) The facilities proposed to be constructed by the Cities of Morgantown, Kentucky, and Grandview, Indiana, shall be constructed and placed in operation within nine months from the date of the issuance of this order.

(D) Midwestern shall notify the Commission within ten days after the commencement of service that deliveries of natural gas to the Cities have been initiated in accordance with the directions of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

AREA RATE PROCEEDING, ET AL., DOCKET NO. AR61-1, ET AL.

ORDER DENYING APPEAL

(Issued May 31, 1963)

On May 27, 1963, Texaco, Inc. (Texaco) filed an appeal from a ruling of the presiding examiner in these proceedings and from the refusal of the examiner to certify the ruling for Commission consideration. The ruling from which the appeal is taken concerns the examiner's action in calling a possible witness to inquire as to the nature of the testimony he might be able to give as to certain issue involved in the instant proceedings (his answers to the presently proposed inquiries not to constitute evidence) and thereafter possibly to testify.

While this is a matter of first impression for the Commission, appeals made during the course of a hearing will not be entertained by the Commission except in extraordinary circumstances.[1] The procedure adopted by the examiner here is not so clearly contrary to our rules that we could reject it out of hand. Nor will Texaco or any other party be adversely affected if we were to follow our normal procedure of deferring passing upon this type of motion going to the conduct of the hearing until we have the entire record before us. On the contrary, whether in the circumstances of this case the examiner has committed or may commit error is a matter that can be better considered upon the full record in the usual course after the examiner has taken his action in this matter and has rendered his decision.[2] Certainly this important proceeding can only be further delayed if we must pass upon such procedural motions at every

[1] *United Fuel Gas Company*, 28 FPC 944, order issued December 5, 1962, in Docket No. G-20270, *et al.*; *Area Rate Proceeding*, 29 FPC 588, order issued March 27, 1963, in Docket No. AR61-1, *et al.*

[2] *Cf.* 28 U.S.C. § 1291; 6 *Moore, Federal Practice*, Par. 54.27-.30 (1953) only final orders of District Courts appealable to Courts of Appeals.

non-routine step taken by the examiner. Accordingly, we find no reason to grant the appeal. Texaco may, if deemed necessary, present its objections to the ruling upon exceptions to the decision of the presiding examiner and we shall consider the ruling at the time the entire proceeding is before us for consideration.

Based on the foregoing, we find that the appeal filed by Texaco on May 27, 1963, should be denied.

The Commission orders:

The appeal filed by Texaco on May 27, 1963, is hereby denied without prejudice to its renewal of its objections at the proper time.

Commissioner Woodward *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

ATLANTIC SEABOARD CORPORATION, DOCKET NO. G–16401; HOME GAS COMPANY, DOCKET NO. G–16402; KENTUCKY GAS TRANSMISSION CORPORATION, DOCKET NO. G–16403; THE MANUFACTURERS LIGHT & HEAT COMPANY, DOCKET NO. G–16404; HOME GAS COMPANY, DOCKET NO. RP63–8

ORDER DENYING PETITION FOR REHEARING AND RECONSIDERATION

(Issued May 31, 1963)

On May 1, 1963, Lynchburg Gas Company (Lynchburg), filed its Application for Rehearing and Reconsideration of: (1) the Commission's letter dated April 1, 1963, accepting the CDS–PR rate schedules filed on February 25, 1963, by Atlantic Seaboard Corporation, Home Gas Company (Home), Kentucky Gas Transmission Corporation and Manufacturers Light and Heat Company, in compliance with Opinion No. 368, 28 FPC 860, as modified, p. 882, Docket No. G–16401, *et al.* and (2) the Commission's order in Docket No. RP63–8, issued April 1, 1963, suspending Home's CDS–EPR rate schedule. Lynchburg contends that these two documents are inconsistent and contradictory and requests that the Commission either vacate its acceptance of the PR filling or, in the alternative, reject Home's EPR filing on the ground that it constitutes a totally improper collateral attack on Opinion No. 368 by seeking to relitigate issues already decided.

The CDS–PR schedules filed by the Columbia companies, in compliance with Opinion No. 368 provide for minimum monthly and annual commodity charges based upon 80 percent of the specified number of days use of a PR customer's contract demand with a redetermination of such number of days use in the event of a 10 percent increase or decrease in the Buyer's sales of gas for industrial purposes. Home's CDS–EPR rate schedule provides as a basis for the minimum bill a 100 percent number of days use of contract demand without the redetermination provision. The 100 percent number of days use of contract demand without a redetermination provision was proposed by each of the Columbia companies in the proceedings in Docket No. G–16401 *et al.* The Commission rejected that proposal in Opinion No. 368 and prescribed a minimum bill based upon 80 percent of the number of days use of contract demand with the redetermination provision. The EPR rate schedule was proposed as an alternative to the PR schedule for the first time in the Columbia companies' application for rehearing of Opinion No. 368. It was rejected by the Commission in the order denying rehearing, issued January 25, 1963, for the reason that it lacked support.

On February 27, 1963, Home in addition to its compliance with Opinion No. 368, proposed the EPR schedule as an alternative to its PR schedule. The Commission, by order issued April 1, 1963, suspended the EPR schedule and ordered hearing thereon to determine whether it results in unjust discrimination to the PR customers of other Columbia companies.

In support of its application Lynchburg contends that: (1) applicable court decisions require the Commission to reject Home's EPR rate filing as it raises an issue which has already been decided and no new facts or circumstances have been alleged to support it; (2) the Commission rejected a proposal substantially similar to Home's made by Lynchburg, in its letter to the Commission dated March 12, 1963, commenting on the PR filing, that Seller should not share in industrial sales where physical location of Seller or the price of Seller's gas would not permit the industrial sale if the PR customer were limited to Seller as his only source of supply; (3) aside from the fact that the Commission erred in accepting Home's EPR filing, Home, in support of that filing, has shown in fact that the PR redetermination provision, as filed, yields absurd and inequitable results, thus requiring modification of the PR provisions of all the Columbia companies; and (4) while Lynchburg disagrees with the PR concept, as long as the Commission has approved it, it must define precisely what it meant in prescribing PR rates and be consistent in following that definition.

The Commission's approval of the PR rates, as clearly stated in Opinion No. 368, was intended to

> insure adequate protection for the Columbia companies and its customers without depriving PR customers of the necessary flexibility to operate as efficiently as possible and obtain their gas from the most economic sources under given conditions. (28 FPC 860, at 863.)

Consistent with this intention we adopted the redetermination provision in order that "the PR customers would be protected against substantial loss of industrial sales, yet Columbia would have an opportunity to share in industrial sales increases." (28 FPC 860, at 866.) When Home showed that the redetermination provision would cause two of its PR customers to lose industrial sales instead of protecting them against such losses it was appropriate for Home to make available to those customers the optional EPR schedule to provide them with more flexibility of operation. The Commission's acceptance of the EPR rate schedule is consistent with the intention of Opinion No. 368 to assure PR customers just such flexibility.

The Commission's acceptance of the PR rate schedules and the acceptance and suspension of Home's EPR rate schedule are not inconsistent. The alternative EPR rate schedule was proposed by the Columbia companies in their application for rehearing of Opinion No. 368, but was there rejected because they failed to support it. Home's proposed EPR schedule was augmented with a statement of facts and figures which were not shown by the Columbia companies in the application for rehearing. That statement sets forth that Home's customers Orange and Rockland Utilities, Inc. and Central Hudson Gas and Electric Corporation have experienced and will continue to experience substantial increases in industrial sales, largely as the result of industrial rates based on the lower commodity rates of other suppliers. It is also stated that the redetermination provision of Home's PR rate schedule would increase the minimum commodity obligation of those customers to Home, thus requiring purchases of more of the higher priced Home gas to the point that they would stand to lose a substantial portion of their present industrial loads. It is further noted that either the increased cost of gas to Rockland and Central Hudson due to additional purchases of Home's higher priced gas or the increased costs to

those customers through loss of industrial sales would have to be passed on to their residential and commercial customers. That showing indicated that inclusion of the alternative PR schedule in Home's tariff may be in keeping with the intent expressed in Opinion No. 368, as noted above, provided it was not discriminatory against other customers on the Columbia system.

Lynchburg suggests that an EPR schedule is necessary for all Columbia companies and not Home only. The question of discrimination thus posed was one of the primary reasons we set the Home filing for hearing and will be adjudicated there. We note, however, that the other Columbia companies have indicated a willingness to file such schedules and have stated that the reasons that they haven't made EPR filings is that none of their customers have indicated a need for the alternative service or a desire that it be extended to them.[1]

It is our view that Lynchburg, in its petition, has failed to show sufficient reasons why the Commission should vacate its acceptance of the PR rate schedule or reject Home's EPR rate schedule.

Lynchburg has set forth no facts or principles of law which we have not fully considered before in these proceedings or which upon present consideration warrant any change or modification of our determination in these matters. Accordingly, we find that Lynchburg's application for rehearing and reconsideration should be denied.

The Commission orders:

The application for rehearing and reconsideration filed by Lynchburg on May 1, 1963, is hereby denied.

Commissioner Morgan *not participating.*

[1] Motion of Home Gas Company To Shorten Suspension Period, Docket No. RP63–8, filed April 8, 1963. Motion of Home Gas Company Requesting Issuance of Order Terminating Proceeding, Docket No. RP63–8, filed May 10, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP62-245

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 3, 1963)

On April 20, 1962, as supplemented on May 24, 1962, Cities Service Gas Company (Applicant) filed in Docket No. CP62-245 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the relocation and replacement of approximately 13,700 feet of its Beloit 4-inch pipeline with 6-inch pipeline and the lowering of approximately 415 feet of said Beloit pipeline extending across a section line road, all located in Mitchell County, Kansas, all as more fully set forth in the application, as supplemented.

The application indicates that the State Highway Commission of Kansas (Highway Commission) in its widening program of U.S. and Kansas State Highway No. 24 has extended the boundaries of the highway right-of-way to the extent that approximately 13,700 feet of Applicant's Beloit 4-inch pipeline previously located on Applicant's private easement, is now located on highway right-of-way. Applicant states that the Highway Commission has required it to relocate said portion of the 4-inch line and to lower a portion of the line extending under a section line road.

Applicant desires to replace said portion of line with 6-inch line and states that the future requirements of the City of Beloit, Kansas, require same and that by replacing the 4-inch line with a larger diameter pipe at this time, considerable expense will be saved.

Applicant estimates the total cost of the proposed project to be $29,700. The Highway Commission will reimburse Applicant $21,874 of the actual construction cost. The cost to be borne by Applicant is that amount of money applicable to the difference between the cost of 4-inch pipe and 6-inch pipe.

By letter, dated June 13, 1962, Applicant was granted a temporary certificate to relocate and replace said pipeline.

Pursuant to due notice, a public hearing was held in Washington, D.C., on May 23, 1963, respecting the matters involved in and the issues presented by the application, as supplemented, herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G-298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application, as supplemented, herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP63-250

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 3, 1963)

On March 8, 1963, El Paso Natural Gas Company (Applicant) filed in Docket No. CP63-250 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing construction and operation of facilities and sale of natural gas. The proposed facilities to consist of a metering station on its Moose Lake lateral at a point near Warden, Washington and from this station to construct 5 miles of 4½ inch pipeline to the point of interconnection with the 4½ inch pipeline of Cascade Natural Gas Corporation (Cascade). Cascade will transport, distribute and sell natural gas purchased from Applicant to the inhabitants of Othello, Adams County, Washington, and the adjacent residents.

Cascade is presently a customer of Applicant in the State of Washington and it is duly qualified under law to engage in the distribution and sale of natural gas for ultimate consumption in that state and that municipality.

The estimated cost of constructing Applicants proposed facilities is $117,000 and the estimated initial cost of Cascade's facilities is $281,327.

The estimated gas requirements of Cascade at the third year of operations is 86,714 Mcf with a maximum day of 948 Mcf.

The proposed sale of natural gas to Cascade will be made upon a firm basis in accordance with the terms of Rate Schedule DS–1, of Applicants FPC Gas Tariff Original Volume No. 3.

Pursuant to due notice, a public hearing was held in Washington, D.C., on May 22, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its rules of Practice and Procedure.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company is a natural gas company within the meaning of the Natural Gas Act as found by the Commission in its order of January 11, 1944 in Docket No. G–288 (4 FPC 486).

(2) The facilities hereinbefore described are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant and the proposed transportation, sale for resale of natural gas by Applicant to Cascade are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant to Cascade for distribution and sale to the inhabitants of Othello, Washington, are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities and to transport, and sell natural gas to Cascade Natural Gas Corporation, as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

LONE STAR GAS COMPANY, DOCKET NO. CP63-22

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 3, 1963)

On April 2, 1963, Lone Star Gas Company (Applicant) filed in Docket No. CP 63-22 an application to amend the Commission's order, issued October 29, 1962, 28 FPC 743, in Docket No. CP63-22 to authorize the construction and operation of approximately 50 feet of 2-inch pipeline extending from a point on Applicant's proposed 6-inch line E-26-4 to the site of a proposed city gate measuring station for the unincorporated community of Millerton, McCurtain County, Oklahoma, all as more fully set forth in the application to amend.

The subject order authorized Applicant to construct and operate facilities extending its existing gas transmission system in order to render natural gas service to Wright City and Valliant, McCurtain County, Oklahoma. Applicant states that it now proposes to serve Millerton, which is in close proximity to the facilities heretofore authorized by the subject order, and, therefore, requests herein authorization to construct the proposed transmission facilities necessary for such service.

Applicant states that it will distribute gas in Millerton as it also proposes to do in Wright City and Valliant.

The estimated cost of the proposed facilities is $4,040.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on May 4, 1963 (28 F.R. 4530). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued October 29, 1962, in Docket No. CP63-22 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued October 29, 1962, in Docket No. CP63-22 be and the same is hereby amended to authorize the construction and operation of approximately 50 feet of 2-inch pipeline extending from a point on Applicant's proposed 6-inch line E-26-4 to the site of a proposed city gate measuring station for the unincorporated community of Millerton, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MANTI CITY CORPORATION, PROJECT NO. 1574

ORDER FURTHER AMENDING LICENSE

(Issued June 3, 1963)

Application was filed March 11, 1963 by Manti City Corporation, licensee for Project No. 1574 (2 FPC 741), for amendment of Article 20 of its license for the project so as to make the new administrative annual charge formula set forth in

the Commission's Order No. 205 issued June 6, 1958 in Docket No. R–129 (19 FPC 907) pertaining to State and municipal licensees, apply to Project No. 1574.

The administrative annual charge as presently fixed under Article 20 of the license is based upon installed horsepower capacity plus annual gross energy generated by the project. Under the new administrative annual charge formula, the assessment of such charges is based upon the actual costs of administering Part I of the Federal Power Act.

The Commission finds:

(1) The license further amended as hereinafter provided is in the public interest.

(2) The installed horsepower capacity of the project for the purpose of computing the capacity component of the annual charge in 530 horsepower, and the annual charge for reimbursing the United States for the costs of administration of Part I of the Act, based on such capacity, is reasonable.

The Commission orders:

(A) The license for Project No. 1574 is hereby further amended, effective as of January 1, 1963, by changing subparagraph A of Article 20 thereof to read as follows:

> A. For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part 11 of the Commission's regulations. The authorized installed capacity for such purpose is 530 horsepower.

(B) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgement of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NORTHERN NATURAL GAS COMPANY, DOCKET NOS. CP62–85, CP62–178; IOWA ELECTRIC LIGHT AND POWER COMPANY, DOCKET NO. CP62–119; AMERICAN GAS COMPANY OF WISCONSIN, INC., DOCKET NO. CP63–34; WISCONSIN SOUTHERN GAS COMPANY, INC., DOCKET NO. CP63–11; CITY OF TIPTON, IOWA, DOCKET NO. CP63–54

ORDER DENYING MOTION FOR ORAL ARGUMENT

(Issued June 3, 1963)

On May 15, 1963, four interveners[1] in this proceeding filed a joint motion requesting opportunity to present oral argument on the "joint exceptions" of the interveners to the Presiding Examiner's decision pursuant to Section 1.31(d)(2) of the Rules of Practice and Procedure.[2]

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[1] Metropolitan Utilities District of Omaha; Minneapolis Gas Company; Northern States Power Company; and Western Power and Gas Company.

[2] Exceptions to the Decision of the Presiding Examiner, issued on April 26, 1963, were also filed by the joint interveners on May 15, 1963.

The exceptions of the joint interveners[2] are primarily addressed to the economic feasibility test proposed by Northern and adopted by the Examiner in this proceeding. Joint interveners allege in their motion that the economic feasibility test applied by Northern is unduly discriminatory and preferential between rate zones on its system, and unduly discriminatory and preferential between present customers of Northern and proposed new customers. The motion states that these are significant and unusual questions which the Commission has not had prior occasion to consider.

Answers to the joint motion for oral argument were filed by Milwaukee Gas Light Company on May 22, 1963, by Wisconsin Power & Light Company and the Public Service Commission of Wisconsin on May 24, 1963 and by Minnesota Valley Natural Gas Company on May 27, 1963.

On May 27, 1963, the joint interveners filed a motion for "permission to file joint reply to answer" of Milwaukee Gas Light Company and Wisconsin Power & Light Company.

The gravamen of interveners' motion for oral argument is that this proceeding raises significant and unusual questions which the Commission has not had prior occasion to consider. The objections to the motion by Wisconsin Power & Light state that there has been a full, fair, and adequate hearing on the issues raised by the joint interveners. The objections further point out that the issues raised by the joint interveners' exceptions to the Examiner's decision are substantially the same issues previously raised in the Commission's Opinion No. 324, 22 FPC 164.

While we are not constrained to deny oral argument on the ground that similar issues were presented in earlier proceedings involving the same parties, we do not feel that the questions now raised by the joint interveners concerning Northern's branch line policy are sufficiently novel or complex as to require oral argument. All requests for oral argument are couched in language of urgency, and suggest that the moving party wishes to present a novel argument of extraordinary significance and complexity to the Commission. If we were to exercise our discretion to allow oral argument indiscriminately, and if all issues were to be construed as raising "novel questions" there would be a serious impairment of our ability to carry out our statutory duties in other cases.

The Commission finds:

(1) The various parties, including the joint interveners, have had an adequate opportunity to present their contentions relating to the issue of the economic feasibility of Northern's proposed new service in their respective briefs and exceptions to the Examiner's decision.

(2) We have had prior occasion to review the issue of economic feasibility in major pipeline expansion cases; and, more specifically, contentions with respect to the alleged discriminatory nature of Northern's lateral line policy. The questions upon which joint interveners now seek to present oral argument do not raise arguments of such novelty as to warrant granting their motion. The alleged "complexity and importance" of the issues alone do not justify oral argument.

The Commission orders:

For the above stated reasons, the motion filed by the joint interveners for oral argument is denied.

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[2] Hereafter, the four interveners who filed the motion to present oral argument will be referred to as the "joint interveners." Originally the joint exceptions to the Examiners decision were filed by five interveners, including Iowa Power & Light Company.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-121

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 3, 1963)

On November 5, 1962, as supplemented on January 23, 1963, Northern Natural Gas Company (Applicant) filed in Docket No. CP63-121 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of pipeline facilities to receive natural gas which will be purchased from producers thereof in Beaver and Ellis Counties, Oklahoma, and Ochiltree and Lipscomb Counties, Texas, all as more fully set forth in the application, as supplemented.

Applicant proposes to construct and operate approximately 145.6 miles of various sizes of pipelines, dehydration facilities, and measuring facilities in an area southeast of Applicant's Beaver Compressor Station in Beaver County, Oklahoma, in an area adjacent to Applicant's Elmwood-Camp Creek gathering system, and in an area which will connect Applicant's present Northup gathering system facilities.

Applicant anticipates that substantial additional reserves will become available adjacent to the facilities proposed and beyond this general area and that these areas will become major sources of supply to supplement its gas reserves for the next several years. Applicant estimates that presently developed acreage together with future development can result in volumes exceeding 200,000 Mcf per day taken into Applicant's main system through the proposed facilities.

The estimated cost of the proposed facilities, which will not increase Applicant's system salable capacity, is $5,327,000, which will be financed from cash on hand and funds generated from operations.

A temporary certificate authorizing the construction and operation of the proposed facilities was issued on January 4, 1963, and amended on April 5, 1963.

Pursuant to due notice, a public hearing was held in Washington, D.C., on May 23, 1963, respecting the matters involved in and the issues presented by the application, as supplemented, herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of busines in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The construction authorized in paragraph (A) above shall be completed and the facilities shall be placed in actual operation within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TENNECO OIL COMPANY (OPERATOR), ET AL., DOCKET NOS. G–13742, G–17152, G–19927, RI61–267, AND RI62–125;[1] TENNECO OIL COMPANY, DOCKET NO. RI63–430

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF CONTRACT AMENDMENTS AND NOTICE OF CHANGE, REQUIRING REFUNDS, AND TERMINATING PROCEEDINGS

(Issued June 3, 1963)

On April 23, 1963, Tenneco Oil Company (Operator), *et al.*, and Tenneco Oil Company (Tenneco) filed an Offer of Settlement in the above-designated rate suspension proceedings. These proceedings relate to increased rates proposed by Tenneco under its FPC Gas Rate Schedule No. 5 for the jurisdictional sale of natural gas to Texas Eastern Transmission Corporation (Texas Eastern), from the West Rockport Field, Aransas County, Texas, and under its FPC Gas Rate Schedule No. 11 for the jurisdictional sale of natural gas to Texas Eastern from the May field, Kleberg County, Texas (Railroad Commission District No. 4). The data pertinent to these proceedings is set forth in Appendix A hereto.

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[1] The proceedings in Docket Nos. G–13742, G–17152, G–19927, RI61–267 and RI62–125, order. Graham's Offer of Settlement of these proceedings insofar as they relate to its interests was accepted conditionally by Commission order issued May 24, 1963, 29 FPC 1042.

Under the terms of the offer, Tenneco proposes to delete the favored-nation, price redetermination, and annual escalation provisions from the subject contracts and to substitute therefor a revised schedule of 1.0 cent per Mcf increases at five-year intervals commencing November 1, 1963. Tenneco proposes to establish a settlement rate of 14.6 cents per Mcf under both rate schedules.

In support of the offer, Tenneco cites the deletion of the favored-nation and price redetermination provisions from its gas purchase contracts with Texas Eastern, and states that such provisions were important elements of consideration required by Tenneco under the contract for the long-term commitment of its gas reserves to the performance of the contracts. Texas Eastern has concurred in the offer. No comments have been received from any of the interveners in these proceedings.

Since the proposed settlement rates are acceptable under the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1, 24 FPC 1107, as amended, the public interest will best be served by accepting Tenneco's proposed Offer of Settlement.

However, we desire to make it clear that acceptance of this Offer of Settlement shall not be construed as approval of any future increased rates proposed by Tenneco.

The Commission finds:

The proposed settlement of the above-designated proceedings, on the basis described herein, as more fully set forth in the Offer of Settlement filed by Tenneco with the Commission on April 23, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by Tenneco with the Commission on April 23, 1963, is hereby approved in accordance with the provisions of this order.

(B) Tenneco shall file, within 30 days from the date of issuance of this order, a notice of change in its FPC Gas Rate Schedule No. 11, providing for the 14.6 cents per Mcf rate, including present tax reimbursement, specified in its Offer of Settlement, and contractual amendments to its FPC Gas Rate Schedule Nos. 5 and 11, which Tenneco shall execute with Texas Eastern in conformity with Tenneco's Offer of Settlement in all respects. The notice of change and the contractual amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Within 30 days from the date of issuance of this order, Tenneco shall refund to Texas Eastern all amounts collected under its FPC Gas Rate Schedule No. 5, in Docket Nos. G–19927, RI61–267 and RI62–125 in excess of the settlement rate of 14.6 cents per Mcf, together with simple interest at the rate of 7 percent per annum, from the date of receipt of such excess amounts by Tenneco to the date of refund. Tenneco shall bear all costs incidental to the making of such refunds.

(D) Within 45 days from the date of issuance of this order, Tenneco shall report to the Commission in writing the details of its calculations resulting in refunds ordered pursuant to paragraph (C) above, together with a copy of a release from Texas Eastern with respect to such refunds.

(E) Upon notification by the Secretary of the Commission that Tenneco has complied with the terms and conditions of this order, the rate and charge of 14.6 cents per Mcf, including present tax reimbursement, specified in the Offer of Settlement shall be effective as of the date of issuance of this order, the proceedings listed in Appendix A hereto except for Graham's interest therein

shall be deemed terminated, and Tenneco's refund obligation with respect to these proceedings, except with respect to Graham's interest, shall be deemed to be discharged.

(F) The acceptance of this Offer of Settlement is without prejudice to any findings or determinations that may be made in any proceedings which are presently being heard, or in any proceedings now pending, or hereafter instituted by or against Tenneco.

APPENDIX A

Docket No.	FPC gas rate schedule No.	Supplement No.	Suspended rate (14.65 psia)	Date made effective subject to refund	Settlement rate (14.65 psia)
			Cents		*Cents*
G–13742	[1] 5	4	14.4	6–10–58	14.6
G–17152	5	5	14.6	6– 3–59	14.6
G–19927	5	6	14.8	4– 6–60	14.6
RI61–267	5	7	15.0	5–12–61	14.6
RI62–125	5	8	15.2	4– 1–62	14.6
RI63–430	11	6	15.4	[2]	14.6

[1] (Operator), *et al.*
[2] Suspended until Oct. 23, 1963, by Commission order issued May 22, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. RP63–1

ORDER DENYING APPEAL FROM SECRETARY'S REJECTION OF LATE FILED REPLY BRIEF

(Issued June 3, 1963)

On May 9, 1963, Willmut Gas & Oil Company (Willmut) filed an appeal from the action of the Commission's Secretary in rejecting the reply brief which it tendered for filing in the above-identified proceedings on April 9, 1963. Such briefs were due on April 3, 1963, pursuant to a Commission Order, issued February 6, 1963,[1] which superseded the briefing schedule previously established by the Hearing Examiner.

On the last day prescribed for the filing of such briefs, Willmut requested a one-day extension. United Gas Pipe Line Company filed an answer opposing this motion on April 8, 1963. Subsequently, on April 29, 1963, the Secretary issued a notice denying Willmut's motion.

Based upon our review of the documents filed and the circumstances of this proceeding, we believe that the Secretary's action was both proper and necessary.

On March 27, 1963, Willmut joined six other parties in a motion seeking an extension from April 3 to April 16. Since this motion was denied on March 29, Willmut was on notice that the Commission deemed it essential that all parties to this proceeding would meet the prescribed briefing schedule which had been set for the very purpose of insuring that final decision herein would be reached as expeditiously as possible. Manifestly, the ability of all other parties to meet this schedule demostrates that ample time was afforded for the preparation of reply briefs. In this connection, we note that the Court of Appeals for the District of Columbia approved a six day period for briefs and the allowance of eight

[1] Order Granting Appeal and Prescribing Schedule of Briefs, 29 FPC 270.

days for oral argument in a case where hearings consumed over four months because of the need for expedition [*Florida Economic Advisory Council* v. *FPC*, 251 F. 2d 643, 648 (1957)]. Indeed, Willmut's appeal admits that its difficulties are entirely attributable to the fact that its counsel was simultaneously engaged in a number of other proceedings. We cannot, however, postpone procedural dates merely to convenience a single party to one of our multi-party proceedings in view of the overriding public interest in prompt decision of the issues in pipeline rate proceedings.

Apart from these considerations, Willmut's brief was submitted a full six days after all other parties had filed timely reply briefs so that the granting of its appeal would be wholly incompatible with orderly and fair administrative procedure. Finally, we are unable to perceive any merit to Willmut's contention that the rejection of its brief would violate its right to submit proposed findings and conclusions under Section 8(b) of the Administrative Procedure Act. In the first place, that statutory provision relates to initial rather than to reply briefs. In the second place, that section does not guarantee parties to an administrative hearing an absolute right to submit trial briefs but merely specifies that each litigant shall be afforded "a reasonable opportunity" to make such submissions.

The Commission orders:

Willmut's appeal from the Secretary's action rejecting its reply brief sought to be filed out of time hereby is denied.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

VILLAGE OF BONNERS FERRY, PROJECT NO. 1991

ORDER FURTHER AMENDING LICENSE

(Issued June 3, 1963)

Application was filed February 28, 1963, by Village of Bonners Ferry, licensee for Project No. 1991 (8 FPC 1141), for amendment of Article 20 of its license for the project so as to make the new administrative annual charge formula set forth in the Commission's Order No. 205 issued June 6, 1958 in Docket No. R-129 (19 FPC 907) pertaining to State and municipal licensees, apply to Project No. 1991.

The administrative annual charge as presently fixed under Article 20 of the license is based upon installed horsepower capacity plus annual gross energy generated by the project. Under the new administrative annual charge formula, the assessment of such charges is based upon the actual costs of administering Part I of the Federal Power Act.

The Commission finds:

(1) The license further amended as hereinafter provided is in the public interest.

(2) The installed horsepower capacity of the project for the purpose of computing the capacity component of the annual charge is 3,600 horsepower, and the annual charge for reimbursing the United States for the costs of administration of Part I of the Act, based on such capacity, is reasonable.

The Commission orders:

(A) The license for Project No. 1991 is hereby further amended, effective as of January 1, 1963, by changing subparagraph A. of Article 20 thereof to read as follows:

> A. For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part 11 of the Commission's regulations. The authorized installed capacity for such purpose is 3,600 horsepower.

(B) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

WATER DISTRICT NO. 97 OF KING COUNTY, WASHINGTON, PROJECT NO. 2316

ORDER ISSUING PRELIMINARY PERMIT

(Issued June 3, 1963)*

Application was filed on June 14, 1962, and revised on June 29, 1962, by Water District No. 97 of King County, Washington (Applicant) for a preliminary permit under Section 4(f) of the Federal Power Act (Act) for proposed Project No. 2316, to be known as the North Fork of the Snoqualmie River Water Supply Project, to be located in King County, Washington, on the North Fork of Snoqualmie River, Lake Hancock, Calligan Lake, and Beaver and Griffin Creeks, near Carnation and North Bend, Washington, and affecting lands of the United States within the Snoqualmie National Forest.

The Secretary of the Army and the Chief of Engineers, in commenting on the application, did not recommend any special conditions in the interest of navigation for inclusion in any preliminary permit issued for the project, but did recommend a special condition in the interest of flood control.

The Department of Agriculture, in commenting on the application, recommended for inclusion in any preliminary permit issued for the project, special conditions for the protection of the national forest lands involved.

The Department of the Interior, in commenting on the application, recommended for inclusion in any preliminary permit issued for the project, special conditions for the protection of the fish and wildlife resources and archeological values involved.

The State of Washington, through its Departments of Fisheries and Game (Petitioners) were, by Commission order issued October 26, 1962, permitted to intervene in this proceeding to the extent of filing briefs on the question raised in their petition of whether applicant is a qualified applicant for a preliminary permit. Petitioners filed their main brief and reply brief on January 14, and March 25, 1963, respectively. Applicant filed its main brief and reply brief on February 25, and March 25, 1963, respectively.

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*Rehearing denied July 22, 1963. Petition for Review dismissed on August 26, 1963 in *State of Washington, Department of Fisheries and Game* v. *F.P.C.* (CA9 No. 18859).

The Interveners contend that applicant is without express or implied authority to develop hydroelectric power. Applicant contends that it has the express power to construct dams and other project works necessary for its water supply operations, and that its proposal to develop power for pumping water is necessary and incidental to such operations. Applicant proposes to sell to a utility system any surplus power not required for pumping or use it in connection with a street lighting system which applicant is empowered to construct and operate. We are of the view that applicant has furnished satisfactory evidence that it is a qualified applicant for a preliminary permit under the Federal Power Act.

Formal protests were filed on September 14, 1962 by Lake Hancock Mutual Protection Association and on September 17, 1962 by Coast Range, Inc., and Alma O. and Merle W. Davis, respectively. Several informal protests were also received. Essentially, the protestants question the safety of the proposed dam, contend that the project would inundate a substantial portion of private land purchased for development of a recreational area, and would cause the loss of many summer homes having a substantial assessed value. By Commission order issued October 26, 1962, 28 FPC 740, a petition to intervene in this proceeding filed by the Town of Snoqualmie was dismissed.

No construction is authorized under a preliminary permit. Such a permit gives the permittee, during the period of the permit, the right of priority of application for license while the permittee undertakes the necessary studies and examinations required by Section 9 of the Federal Power Act in order to determine the economic feasibility of the proposed project, the means of securing the necessary financial arrangements for construction, the market for power, and all other information necessary for inclusion in an application for license, should one be applied for under the permit. A license would authorize construction of a project.

Applicant requests a preliminary permit for a period of 36 months. It appears appropriate, however, that the period of the permit should be 24 months as hereinafter provided.

The Commission finds:

(1) Applicant is a municipal corporation organized under the laws of the State of Washington.

(2) Public notice of the filing of the application has been given as required by the Act. No conflicting application is before the Commission.

(3) The proposed project will affect lands of the United States, but will not affect any Government dam, and no reason is apparent at this time for development of this proposed project by the United States.

The Commission orders:

(A) This preliminary permit is hereby issued to Water District No. 97 of King County, Washington (hereinafter referred to as the Permittee) for a period of 24 months, effective as of May 1, 1963, for the sole purpose of maintaining priority of application for license for Project No. 2316 to be located in King County, near Carnation and North Bend, Washington, on the North Fork of Snoqualmie River, Lake Hancock, Calligan, and Beaver and Griffin Creeks, and affecting lands of the United States within Snoqualmie National Forest, subject to the terms and conditions of the Act, which is incorporated by reference as a part of this permit, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) The proposed project would consist of an earth dam approximately 170 feet high on the North Fork of Snoqualmie River, 16 miles north of the Town

of North Bend, creating a reservoir with surface area of 2,200 acres and a volume of 100,000 acre-feet at elevation 1,560 feet. The water will be carried southwesterly by pipeline to Beaver Creek and be discharged into an improved channel in Beaver Creek. Low dams will be constructed at the outlets to Calligan Lake and Lake Hancock and additional water will be transported to the Beaver Creek channel through a pipeline. The water will flow westward down Beaver Creek channel and Beaver Creek Reservoir to a forebay where it will again pass into a pipeline and be carried westerly to East Fork Griffin Creek where it will flow through Griffin Creek channel and reservoir to a forebay. The water will then be carried by pipeline to a point 1½ miles southeast of Carnation, Washington, where it will pass through Carnation Hydroelectric plant with installed capactiy of 45,000 horsepower and be discharged into a channel leading westerly one mile. The excess water will flow into the Tolt River and the balance of the water will be transported 1½ miles southeasterly by gravity pipeline to a pumping station. A portion of the power to be generated by the project will be utilized by Applicant to pump water and any surplus will be disposed of to one or more electric utility systems in the State of Washington.

(C) This permit is also subject to the terms and conditions set forth in Form P–1 entitled "Terms and Conditions of Preliminary Permit" (16 FPC 1303–1305), which terms and conditions (designated as Articles 1 through 8) are attached hereto and made a part hereof; and further subject to the following special conditions set forth herein as additional articles:

Article 9. The Permittee shall submit at the close of each six month period, from the effective date of the permit, to the Regional Engineer, Federal Power Commission, San Francisco, California, having supervision over the project, or to such other officer as the Commission may designate, accurate statements of the work accomplished during the period and of the work contemplated under this permit for the ensuing period.

Article 10. The Permittee shall immediately coordinate its studies with the District Engineer, U.S. Army Engineer District, Seattle, Washington, in order that provision may be made in the project for about 50,000 acre-feet of flood control. All site information, project cost estimates with and without flood storage and estimated project benefits shall be furnished the District Engineer, U.S. Army Engineer District, Seattle, Washington, before July 1, 1963.

Article 11. The Permittee shall, prior to undertaking any investigation work under this permit on National Forest lands, consult with the Regional Forester, United States Forest Service, Portland, Oregon, or his representative, as to reasonable requirements relative to the operation, field surveys and explorations, and shall abide by such requirements; and shall cooperate with the United States Forest Service during the period of this permit to develop a plan for alleviation of damage to, and achieving maximum utilization of, National Forest resources including recreation, insofar as affected by the proposed project; and shall enter into a memorandum of understanding pertaining to the requirements for fire protection and control and liability for injury to or destruction of Forest Service lands, resources, buildings, bridges, roads, trails, and other improvements or properties of the United States.

Article 12. The Permittee shall, during the period of the permit, cooperate with the U.S. Fish and Wildlife Service, the Washington Department of Game and the Washington Department of Fisheries, for the purpose of planning and designing adequate conservation measures to mitigate and compensate for the loss of or damage to existing fish and wildlife resources, and to develop and improve those resources where practicable.

Article 13. The Permittee shall consult with the Department of Anthropology, University of Washington, Seattle, Washington, to determine the probable cost of archeological survey and salvage.

Article 14. The Permittee shall for the purpose of assuring the cooperation required by the terms of the permit, designate a liaison officer to act for the Permittee in keeping the several agencies specified in this permit currently informed, and such liaison officer shall communicate with such agencies within 60 days from the date of issuance of this permit.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this preliminary permit. In acknowledgment of the acceptance of this preliminary permit, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP63-126; SOUTHWEST PRODUCTION COMPANY, DOCKET NO. CI63-618; PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. CI63-1455

ORDER TO SHOW CAUSE, NOTICE OF APPLICATIONS, AND CONSOLIDATION OF PROCEEDINGS

(Issued June 4, 1963)

Take notice that El Paso Natural Gas Company (El Paso), a Delaware corporation with its principal place of business in El Paso, Texas, filed in Docket No. CP63-126 on November 7, 1962, as supplemented March 11, 1963, an application pursuant to Section 7(c) of the Natural Gas Act (Act) for a certificate of public convenience and necessity authorizing El Paso to construct and operate pipeline facilities for the acquisition of an additional gas supply, and Southwest Production Company (Southwest), a partnership composed of John H. Hill and Joseph P. Driscoll, with principal place of business at 3108 Southland Center, Dallas 1, Texas, filed in Docket No. CI63-618 on November 9, 1962, an application pursuant to Section 7(c) of the Act for a certificate of public convenience and necessity authorizing Southwest to sell and deliver to El Paso in interstate commerce for resale natural gas to be produced from acreage in San Juan and Rio Arriba Counties, New Mexico, all as hereinafter described, subject to the jurisdiction of the Commission, as more fully represented in the applications which are on file with the Commission and open for public inspection.

Southwest proposes to acquire the working interest which Pan American Petroleum Corporation (Pan American) has in certain leaseholds located in the San Juan Basin in San Juan and Rio Arriba Counties, New Mexico. The interest Southwest expects to acquire is confined to the Dakota formation[1] underlying approximately 81,000 acres. For Pan American's leases, Southwest

[1] The Lease Purchase Agreement defines the "Dakota" formation as "* * * all formations lying between the base of the Greenhorn Limestone Formation and a point 400 feet below the base of the Greenhorn Limestone Formation, consisting of the Graneros Formation, the Dakota Formation and the productive upper portion of the Morrison Formation."

proposes to pay a total amount of $56,390,655 to be due as follows: (a) $8,500,000 to be paid on the date of closing, (b) $23,490,655[2] due on the fourth day of the next succeeding calendar year following the date of closing, and (c) $24,400,000 to consist of 10 non-interest bearing notes, in the principal amount of $2,440,000 each, which mature and are due annually in the eleventh through the twentieth year after the date of closing. A redetermination of reserves is required ten years after the date of closing and the purchase price is to be adjusted upward or downward if the recoverable reserves are then calculated to be more or less than the estimate of 735 billion cubic feet (at 15.025 psia)[3] which served as the basis for the negotiation of the purchase price.

Southwest states that is filed with its application a gas purchase contract with El Paso dated September 27, 1962. Southwest's application indicates that it expects to dedicate to the performance of this contract with El Paso the interest it proposes to acquire from Pan American except for: (1) the reservation of sufficient reserves, not to exceed 7,500 Mcf per day, which have been previously committed for service by Pan American Gas Company to the City of Farmington, New Mexico, and (2) the volumes, not to exceed 2,500 Mcf per day, which have been previously committed for repressuring in the Bisti Field, San Juan County, New Mexico. Southwest avers that it is presently engaged in the production and sale of natural gas to El Paso and Southern Union Gas Company from lands located in the same area as those which are the subject of its application herein.

Southwest's application states that it will develop the reserves to be acquired from Pan American over a five-year drilling period so as to make the gas available as El Paso needs it to meet future market requirements. El Paso's application also indicates that the gas to be acquired from Southwest is not desired for new or additional sales but for augmenting El Paso's present gas supply. Southwest expects to acquire the funds needed for developing its leases from the Texas Bank & Trust Company of Dallas (Texas Bank) pursuant to a loan agreement with Texas Bank whereby the latter will advance to Southwest a sum not to exceed $26,735,000.[4] This sum will be used to pay Pan American for its unrecovered well costs,[5] presently estimated at $3,500,000, to defray preparatory costs of the initial five-year drilling program, and to supply $95,000 for each full-working-interest well completed over the five-year period. The obligation of Southwest to repay Texas Bank will be evidenced by notes in the respective amounts thereof bearing interest at 6 percent per annum, both interest and prinicpal being payable within 15 years.

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[2] This payment *includes* $3,500,000 to reimburse Pan American for its unrecovered costs attributable to the drilling, completing and equipping of wells which have been drilled and completed by Pan American; this price is subject to adjustment upward or downward to the extent that Pan American's unrecovered well costs are greater or less than $3,500,000.

[3] Although the first supplement to El Paso's application refers to recoverable reserves of 781 billion cubic feet of gas, Article III of the Lease Purchase Agreement between Pan American and Southwest states that the purchase price set forth therein "* * * is based upon a calculated reserve of 735,000,000,000 cubic feet of recoverable reserves of gas attributable to the net leasehold interests assigned."

[4] According to the first supplement to El Paso's application, this amount will be reduced to $24,735,000 because Southwest now proposes to amend its loan agreement with Texas Bank so as to borrow $1,000,000, instead of $3,000,000 as originally proposed, for defraying preparatory costs and other expenses during the contemplated five-year drilling and development program.

[5] See footnote 2 *supra* for explanation of unrecovered well costs.

Under the aforementioned gas purchase contract, El Paso is obligated to take or pay for the volumes of gas set forth in the following tabulation:

Contract year:	*Volumes to be taken or paid for during the year (Mcf at 15.025 psia)*[6]
1st	4,615,251
2d	4,821,228
3rd	5,282,436
4th	7,269,489
5th	11,319,379
6th	27,918,289
7th	26,391,089
8th	26,382,809
9th	26,382,060
10th	26,376,449
11th	42,965,800
12th through 15th	40,751,068
16th	17,512,677
17th through 20th	16,654,212

According to the contract, El Paso's obligation to take or pay for the volumes set forth above cannot be reduced "* * * by reason of restriction on production imposed under proration or similar regulation, but shall be reduced to the extent that Seller's wells are inadequate to deliver the volumes specified above." During the first year of purchases under the contract, El Paso must pay 12 cents per Mcf (at 15.025 psia). The price per Mcf is subject to a one-cent escalation on January 1, 1964, and to a further one-cent escalation at the end of each five-year period thereafter.

Attached to the gas purchase contract is a schedule which sets forth the prices for gasoline and additional products and El Paso is obligated to pay Southwest an amount for liquid hydrocarbons in accordance with this schedule, but El Paso may never pay Southwest less than one cent per Mcf for liquid hydrocarbons, irrespective of whether the gas to be purchased from Southwest is processed for extraction of such liquids. This charge for liquid hydrocarbons would be in addition to the basic natural-gas prices given above.

The gas purchase contract between El Paso and Southwest also provides that El Paso's take-or-pay obligations under the contract will be increased or reduced to the extent that the reserve redetermination in the 10th year after closing varies above or below the estimate of 735 billion cubic feet which was used by the parties when they negotiated the contract. For each 1,000,000 Mcf that the estimate of recoverable reserves varies above or below 735 billion cubic feet, the annual take-or-pay obligations will be increased or reduced by the following annual volumes:

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[6] These volumes are related to the working interest to be acquired by Southwest from Pan American. The first supplement to El Paso's application states that when Southwest develops Pan American's working interest on the 320-acre drillsite spacing required by the New Mexico Oil Conservation Commission, El Paso will also have opportunity to acquire about 362 billion cubic feet of gas underlying 37,101 acres not owned by Pan American and apparently not dedicated to any purchaser at the present time.

Contract year:	Increase or decrease in annual purchase obligation per 1,000,000 Mcf of variance above or below 735 MMMcf (at 15.025 psia)
11th	54,416
12th through 16th	51,611
17th through 20th	49,081

If the Federal Power Commission should allow prices which are more or less than the prices set forth in the contract, the contract provides that the minimum volumes tabulated above shall be increased in case of a price reduction and decreased in the event of a price increase pursuant to a formula given in Article IV of the gas purchase contract. The contract indicates that El Paso may take subsequently throughout the life of the reserves any quantity of gas for which El Paso has paid without actually having received delivery thereof from Southwest.

El Paso's application indicates that it will advance a total of $28,490,655 to Southwest so that the latter may make the down payment of $8,500,000 to Pan American on the date of closing and pay Pan American the additional sum of $19,990,655 which is due on the fourth day of the next succeeding calendar year after the date of closing. Southwest's obligation to repay El Paso, according to the first supplement to El Paso's application, will be evidenced by promissory notes providing that of the principal amount of $28,490,655, a sum of $10,000,000 will bear interest at the rate of 3½ percent per annum and will first be repaid, and that the remaining principal amount advanced will bear interest at the rate of 5 percent and will be repaid following full repayment of the $10,000,000 portion of the advance. The cash flow statement (Exhibit L) to the first supplement of El Paso's application shows that $8,301,294 of the total amount to be advanced by El Paso would still be unpaid after the 30th year of operation.

Texas Bank, in addition to advancing about $24,735,000 to Southwest so as to enable the latter to reimburse Pan American for unrecovered well costs and to pay for development of the leases over a five-year period, will function as a depository and disbursement agent for receipt of funds payable to Southwest by El Paso under the gas purchase contract and for receipt of any other income resulting from the operation of the properties to be conveyed by Pan American to Southwest. Texas Bank will disburse these funds in the following priority: (1) payment monthly of royalties and taxes attributable to the properties to be conveyed by Pan American to Southwest; (2) payment monthly to Southwest, for operating and overhead expenses in connection with the properties, a sum equal to $50 per net well, plus $8,333.33, plus one-twelfth of the annual ad valorem tax assessed against the properties; (3) repayment to Texas Bank of the $24,735,000 advanced to Southwest by Texas Bank for developing the properties; (4) payment to Pan American of the annual notes in the amount of $2,440,000 which are to mature in the 11th through 20th years after the properties are acquired; and (5) repayment to El Paso of the $28,490,655 advanced to Southwest by El Paso to cover Southwest's initial down payment and subsequent lump sum payment on the leases to be acquired from Pan American.[7]

[7] Under the "depository" agreement, if Texas Bank has funds during the first ten years in excess of those needed to pay royalties, taxes, and operating expenses plus repaying Texas Bank's advances, Texas Bank will make payments to El Paso rather than apply funds to paying the Pan American notes prior to their maturity dates.

Southwest will execute a mortgage on the properties to be acquired from Pan American so as to give a first and prior lien on the properties in favor of Pan American subject to priority in favor of Texas Bank until the advances made by Texas Bank are repaid and thereafter in favor of El Paso subject to Pan American's having received payment in full for the properties.

El Paso states in the first supplement to its application that it proposes and intends to treat a portion of the $28,490,655 advance to be made to Southwest, that is, the $10,000,000 portion which is to bear interest at 3½ percent, as an investment which will be added to El Paso's rate base so as to earn a return and related taxes thereon with appropriate credit made for interest earned on such investment.

In order to receive the gas supplies from Southwest as hereinbefore described, El Paso seeks authorization to construct and operate, over a five-year period, approximately 291.8 miles of field piplines, consisting of 4½-inch through 20-inch pipe of varying lengths, and the necessary measuring, regulating, and connecting facilities required to attach Southwest's wells to El Paso's system in the San Juan Basin area in San Juan and Rio Arriba Counties, New Mexico. The total estimated cost of these facilities, including allowance for overhead and contingency provisions, is $11,548,000.

El Paso will finance its proposed advance of $28,490,655 to Southwest by means of short-term bank loans as required to supplement current working funds. The application states that the bank loans will probably be repaid through the sale of funded debt securities during the first or second quarter of 1963. This sale would consist of approximately $30,000,000 of First Mortgage Bonds secured by previously constructed bondable additions and an approximately equal amount of debentures. El Paso believes that the bonds can be sold at a rate of 5 percent and that the debentures can be sold at substantially the same terms as its debentures issued August 7, 1961, which call for an interest rate of 5¼ percent and retirement over a period of 20 years. The funds, in the estimated amount of $11,548,000, required for the construction of the proposed pipeline facilities will be expended over a five-year period and will be provided as required from current working funds, supplemented as necessary by short-term bank loans.

On April 16, 1963, the Commission's Secretary mailed a letter to Pan American Petroleum Corporation, P.O. Box 591, Tulsa 2, Oklahoma, requesting that Pan American advise the Commission as to whether it is currently delivering gas to El Paso from the leases which are the subject of the Lease Purchase Agreement, heretofore described, between Southwest and Pan American. On May 9, 1963, Pan American filed in reply to the Secretary's inquiry a statement indicating that gas is being delivered to El Paso from many of the same leases which Southwest proposes to purchase from Pan American under the Lease Purchase Agreement, a copy of which is attached as Exhibit X–1 to El Paso's application in Docket No. CP63–126. In Docket No. CI63–618 Southwest seeks authorization to make sales to El Paso from much of the same acreage from which Pan American's gas is apparently now being delivered to El Paso.

Pan American's reply, for example, shows that its gas is currently being sold to El Paso from Huerfano Unit Well Nos. 92, 99, 103, 104, 105, 107, 109, 110, and 111 and that El Paso is the operator of each of these Huerfano Unit wells. Pan American's reply further shows that the smallest amount it received in 1962 for gas produced from these wells was $1,451.93 for its 35.09849 percent interest in Huerfano Unit Well No. 103, and that the largest amount it received in 1962 for gas produced from these wells was $10,074.61 for its 35.09849 percent interest in

Huerfano Unit Well No. 104. Page 38 of the Annual Report of the New Mexico Oil & Gas Engineering Committee, Volume II, 1960, shows that all of the aforementioned Huerfano Unit wells are located in T26N, R9W, or T26N, R10W, or T27N, R10W.

An examination of the map which is Exhibit F to El Paso's application in Docket No. CP63–126 reveals that all of the Huerfano Unit wells, according to the locations given in the New Mexico Oil & Gas Engineering Committee's Annual Report, are situated on the acreage which Southwest proposes to acquire from Pan American under its Lease Purchase Agreement with Pan American. Pan American's reply to the Secretary's letter indicates that no rate schedule has been filed with the Commission in connection with Pan American's sales of gas from the Huerfano Unit wells where El Paso is the operator. Section 154.91 (c)(2) of the Commission's Regulations under the Natural Gas Act provides that:

> (2) Where the operator is an interstate pipe-line transmission company and delivers gas into its own lines for interstate transmission it shall file a statement setting forth the names of all the co-owners whose gas is so delivered and the respective per centum of ownership therein, and such *co-owners shall make all required filings.* [Emphasis supplied.]

The Commission finds

(1) Pursuant to Section 1.20(b) of the Commission's Rules of Practice and Procedure, the applications hereinbefore described and Pan American's Docket No. CI63–1455 should be consolidated for the purposes of hearing on all matters at issue therein.

(2) It is necessary and appropriate in the public interest that Pan American be ordered in Docket No. CI63–1455 to show cause, if any there be, why it should not be found to be engaged in the sale of natural gas to El Paso subject to the jurisdiction of the Commission without having secured requisite authorization therefor pursuant to Sections 7 and 4 of the Natural Gas Act and the Commission's Regulations thereunder, and to show cause, if any there be, why it should not be required to file an application for abandonment, pursuant to Section 7 of the Act, for sales from the leases which it proposes to sell to Southwest under the Lease Purchase Agreement, a copy of which is attached as Exhibit X–1 to El Paso's application in Docket No. CP63–126.

The Commission orders:

(A) The applications filed in Docket Nos. CP63–126 and CI63–618 and Pan American's Docket No. CI63–1455 are hereby consolidated for purposes of hearing on all matters at issue therein.

(B) At the hearing provided for in paragraph (C) hereof, Pan American in Docket No. CI63–1455 shall show cause, if any there be, why it should not be found to be engaged in the sale of natural gas to El Paso subject to the jurisdiction of the Commission without having secured requisite authorization therefor pursuant to Sections 7 and 4 of the Natural Gas Act and the Commission's Regulations thereunder, and shall show cause, if any there be, why it should not be required to file an application for abandonment, pursuant to Section 7 of the Act, of sales from the leases which it proposes to sell to Southwest under the Lease Purchase Agreement, a copy of which is attached as Exhibit X–1 to El Paso's application in Docket No. CP63–126.

(C) Pursuant to the authority contained in, and subject to the authority conferred upon the Federal Power Commission by the Natural Gas Act, including particularly Sections 7, 14, 15, and 16, and the Commission's Rules and Regula-

tions under that Act, a public hearing shall be held commencing September 10, 1963, at 10:00 a.m. (EDST) in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington 25, D.C., concerning the matters involved in and the issues presented by paragraphs (A) and (B) hereof.

(D) Protests or petitions to intervene in this consolidated proceeding may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before August 1, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

GARKANE POWER ASSOCIATION, INC., PROJECT NO. 2219

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL PROJECT COST, NET CHANGE THEREIN, AND PRESCRIBING ACCOUNTING THEREFOR

(Issued June 4, 1963)

Garkane Power Association, Licensee for Project No. 2219,[1] on October 15, 1959, filed its initial statement, pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming for Project No. 2219, as of March 10, 1959, an actual legitimate original cost of $1,683,237.39. In addition, Licensee's books and records show for the period March 10, 1959, through December 31, 1960 an increase in project cost of additions of $1,198.27, resulting in a total claimed actual legitimate original cost of the project as of December 31, 1960 of $1,684,435.66.[2]

The Commission's staff made a field examination of the books and records of Licensee and other data for the purpose of ascertaining the correctness of the claimed project cost as of March 10, 1959 and the correctness of subsequent recorded project cost changes and resulting project cost as of December 31, 1960.

Following that examination, an agreement, subject to Commission approval, was reached between the staff and Licensee's representatives with respect to certain proposed adjustments involving (1) a reduction of $19,575 in the claimed cost as of March 10, 1959 (2) an increase of $90,474.52 in project cost for the period from March 10, 1959, through December 31, 1960 (3) reclassification of certain items totaling $41,382.57 within project accounts; and (4) accounting dispositions of the foregoing amounts.

Based upon the proposed adjustments, the resulting revised actual legitimate original cost of Project No. 2219 as of March 10, 1959 is $1,663,662.39; the result-

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[1] Project No. 2219, Boulder Creek, is located on the East Fork of Boulder Creek in Garfield County about 30 miles from the town of Escalante, Utah. The license (issued May 27, 1957, pursuant to section 4(e) of the Federal Power Act, 17 FPC 763), authorizing the construction, operation, and maintenance of the project, is by its terms effective for a period of 50 years, beginning May 1, 1957. On March 8, 1960 the Commission issued an Order Amending License effective January 1, 1960, *Garkane Power Association, Inc.* Project No. 2219 (23 FPC 491) approving Licensee's application to change the voltage classification of the Boulder-Escalante transmission line from 44-kv, as previously authorized in the license, to 69-kv; to change the transformer facilities so that the line may be energized and operated at either 44-kv or 69-kv; and to include in the project, the portion of the 69-kv transmission line extending between Escalante and Henrieville, Utah. The project was placed in commercial operation on September 12, 1958.

[2] Article 20 of the license provides for Commission determination of the actual legitimate original cost of the project and of any additions thereto or betterments thereof.

ing revised net increase or change in the project cost is $91,672.79; and the resulting revised actual legitimate original cost of the project as of December 31, 1960 is $1,755,335.18.

The proposed eliminations relative to initial project costs in the total amount of $19,575.00 and adjustments in costs for the period March 10, 1959 through December 31, 1960 are composed of the following items:

	Debit (Credit)
Initial project cost:	
Nonproject land	($920.00)
Nonproject distribution facilities	(14,022.54)
Interest during construction	(4,217.45)
Improperly capitalized item	(415.01)
Total adjustments of initial cost	($19,575.00)
March 10, 1959 through December 31, 1960:	
Transfer of transmission line from nonproject to project in 1960	90,474.52
Net adjustments	$70,899.52

The proposed accounting dispositions of the amounts involved in the proposed adjustments to bring Licensee's recorded project cost and changes into agreement with the recommended project cost and changes tentatively agreed to between Licensee and the staff as of December 31, 1960 are shown by the following composite journal entry:

Account No.[1]	Title	Debit (Credit)
101	Electric Plant in Service—Project No. 2219	$70,899.52
101	Electric Plant in Service—Nonproject	(16,062.09)
107	Construction Work in Progress—Electric	(60,745.31)
121	Nonutility Property	920.00
186	Miscellaneous Deferred Debits	415.01
216	Unappropriated Earned Surplus	4,572.87
	Total Disposition	(70,899.52)

[1] Account references are to account numbers and titles prescribed in the Commission's revised Uniform System of Accounts for Public Utilities and Licensees, effective Jan. 1, 1961, except in the attached schedules, which employ account numbers and titles prescribed in the Commission's Uniform System of Accounts prior to January 1, 1961. This reflects the fact that items of project cost were entered upon Licensee's books of account prior to January 1, 1961.

The Commission's Staff recommends and Licensee, by letter of March 23, 1962, confirming its agreement to the proposed adjustments, accounting dispositions, and resulting project costs for Project No. 2219 (Boulder Creek), concurs that the Commission determine: (1) the actual legitimate original cost of the Boulder Creek project as of March 10, 1959, to be $1,663,662.39; (2) the net increase or change in the actual legitimate original cost of the Boulder Creek project during the period March 10, 1959 through December 31, 1960 to be $91,672.79; and (3) the actual legitimate original cost of the Boulder Creek project at December 31, 1960, to be $1,755,335.18, classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees as shown in the attached Schedule.

The Public Service Commission of Utah was advised by letter of this Commission dated December 19, 1961, that this Commission's staff would undertake an examination of Licensee's project costs. An invitation was extended for participation by that Commission in the then pending staff field examination. By letter of December 26, 1961, the Utah Commission replied that it had no jurisdiction over the licensee.

The Commission finds:

(1) Licensee, by its tentative agreement to the proposed adjustments, including the accounting dispositions and the resulting project costs, and its letter dated March 23, 1962, and the Public Service Commission of Utah, by its letter dated December 26, 1961, have obviated the necessity for notice and opportunity to protest provided in Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments, including the accounting dispositions, are reasonable and appropriate for the purpose of the Federal Power Act, and therefore should be approved and directed as hereinafter provided.

(3) The actual legitimate original cost of Project No. 2219 as of March 10, 1959, is $1,663,662.39; the net increase or change in the actual legitimate original cost of Project No. 2219 from March 10, 1959, through December 31, 1960 is $91,672.79; and the resulting actual legitimate original cost of the project as of December 31, 1960 is $1,755,335.18, classified by primary plant accounts as shown by the attached schedule.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments and accounting dispositions, as proposed by the staff and agreed to by the Licensee, are hereby approved and directed to be made by the Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed project accounts for Project No. 2219, showing the debit balance of $1,663,662.39 as of March 10, 1959; the debit amount of $91,672.79 as the net increase or change in the project cost for the period March 10, 1959 through December 31, 1960; and the total debit balance of $1,755,335.18 as the actual legitimate original cost of the project as of December 31, 1960, all as more specifically shown in the attached Schedule classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(D) Licensee shall within 90 days from the issuance of this order file with the Commission, in quintuplicate, FPC Form No. 7 and certified copies of Licensee's adjusting journal entries as of December 31, 1960 showing compliance with this order three copies of that form and those journal entries to be submitted to the Secretary, Federal Power Commission, Washington 25, D.C., and two copies thereof to be submitted to the Regional Accountant, Federal Power Commission, San Francisco 11, California.

737-869—64——74

PROJECT NO. 2219 (BOULDER CREEK), GARKANE POWER ASSOCIATION, INC., ACTUAL LEGITIMATE ORIGINAL COST

Account No.	Title	Initial claimed cost as of Mar. 10, 1959				Changes from Mar. 10, 1959, through Dec. 31, 1960			
		As claimed (1)	Adjustments and reclassifications (2)	Before distribution (3)	After distribution (4)	As recorded (5)	Adjustments (6)	As adjusted (7)	Cost as of Dec. 31, 1960 (8)
	Hydraulic production plant								
320	Land and land rights	$2,537.69	($1,117.05)	$1,420.64	$1,440.56				$1,440.56
321	Structure and improvements	76,313.00	3,655.19	79,968.19	89,726.36	$120.38		$120.38	89,846.74
322	Reservoirs, dams, and waterways	869,036.41	178.93	869,215.34	974,681.16	25.00		25.00	974,706.16
323	Water wheels, turbines, and generators	213,519.31	(186.75)	213,332.56	239,180.14				239,180.14
324	Accessory electric equipment	68,875.90	(114.13)	68,761.77	77,167.20				77,167.20
325	Miscellaneous power plant equipment	8,441.00	(3,400.00)	5,041.00	5,643.31	255.51		255.51	5,898.82
326	Roads, railroads, and bridges	1,364.43	(178.93)	1,185.50	1,334.96				1,334.96
	Total hydraulic production plant	1,240,087.74	(1,162.74)	1,238,925.00	1,389,173.69	400.89		400.89	1,389,574.58
	Transmission plant								
340	Land and land rights	400.00		400.00	405.61				405.61
341	Clearing land and rights-of-way		14,634.40	14,634.40	15,657.82		$3,572.67	3,572.67	19,230.49
342	Structures and improvements	22,717.00	(22,717.00)						
343	Station equipment	66,688.50	22,602.87	89,291.37	95,552.91				95,552.91
345	Poles and fixtures	[1] 65,699.90	(2,475.50)	62,642.40	67,005.07		38,401.92	38,401.92	105,406.99
346	Overhead conductors and devices	[1] 101,746.11	(12,158.90)	89,587.21	95,867.29		48,499.93	48,499.93	144,367.22
	Total transmission plant	256,651.51	(114.13)	256,537.38	274,488.70		90,474.52	90,474.52	364,963.22
	Distribution plant								
352	Station equipment	[1] 13,278.02	(13,278.02)						

	General plant								
378	Communication equipment					797.38		797.38	797.38
379	Miscellaneous equipment	255.19	(255.19)						
	Total general plant	255.19	(255.19)			797.38		797.38	797.38
	Total direct costs	1,510,272.46	(14,810.08)	1,495,462.38					
	Overhead construction costs								
71	Engineering	144,187.62	(528.40)	143,659.22					
76	Administrative and general expenses	1,558.56	(13.72)	1,544.84					
77	Interest	27,218.75	(4,222.80)	22,995.95					
	Total overhead construction costs	172,964.93	(4,764.92)	168,200.01					
	Total cost of project	1,683,237.39	(19,575.00)	1,663,662.39	1,663,662.39	1,198.27	90,474.52	91,672.79	1,755,335.18

[1] These amounts by primary accounts per books totaling $180,124.03, shown in the statement of claimed cost in one amount only for combined accounts 345 and 346.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MIDWEST NATURAL GAS CORPORATION, DOCKET NO. CP63-186

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued June 4, 1963)

On December 28, 1962, Midwest Natural Gas Corporation, (Applicant) an Indiana corporation of Washington, Indiana, "a public utility" engaged in the distribution and sale of natural gas in accordance with authorization by the State of Indiana, filed in Docket No. CP63-186 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Texas Eastern Transmission Corporation (Texas Eastern) a natural gas company, to establish a physical connection between its established pipeline transmission system and the facilities which Applicant proposes to construct and operate in the Town of Medora, Indiana.

Applicant proposes to construct a distribution pipeline system in the Town of Medora, above mentioned and to sell and distribute natural gas in the town and its adjacent area at an estimated cost of $50,000 which cost will be financed by a bank loan already arranged for.

Applicant estimates its peak day and annual requirements at 284 Mcf and 27,678 Mcf respectively.

The inhabitants of Medora are now without any gas supply.

On February 8, 1963, Texas Eastern filed an answer to the application stating that in view of the *de minimis* nature of the volumes of gas involved in this matter, it will sell and deliver the small volumes and abide by what ever decision the Commission may make.

Notice of the application was issued on April 22, 1963, and published in the Federal Register on April 27, 1963 (28 F.R. 4213). No protest, request for hearing, or petition to intervene has been received.

The Commission finds:

(1) Applicant, Midwest Natural Gas Corporation, is a public utility organized under the laws of Indiana and is legally authorized to construct and operate the proposed natural gas facilities and to sell and distribute natural gas in the Town of Medora and its environs.

(2) Texas Eastern Transmission Corporation is a natural gas company within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 10, 1947, in Docket No. G-880 (6 FPC 188).

(3) It is necessary and in the public interest to direct Texas Eastern to establish physical connection of its gas transmission facilities with the facilities to be constructed by the Applicant and to sell Applicant up to 284 Mcf of natural gas per day a total annual volume of up to 27,678 Mcf per annum.

(4) Applicant, should begin the taking of gas from Texas Eastern within one year from the date of issuance of this order.

The Commission orders:

(A) Texas Eastern Transmission Corporation be and hereby is directed to establish physical connection of its transmission facilities with the facilities to be constructed by applicant as hereinbefore described and to sell and deliver up to 284 Mcf of natural gas per day and a total annual volume of up to 27,678 Mcf in accordance with a service agreement to be made between the parties and filed with the Commission before the commencement of sales.

(B) Applicant shall commence the purchase of gas as proposed within one year from the date of issuance of this order.

(C) Texas Eastern shall report in writing to the Commission within ten days after the beginning of service to Applicant.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. G–1277

ORDER FURTHER AMENDING ORDER MODIFYING AND AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 4, 1963)

On November 2, 1962, Piedmont Natural Gas Company (Piedmont) filed in Docket No. G–1277 an application to amend further the Commission's order, issued May 28, 1954, in Docket No. G–1277, *et al.*, 13 FPC 1086, to transfer to Piedmont 690 Mcf of the 5,407 Mcf of daily allocation of natural gas to the communities of Greenwood and Honea Path, South Carolina, all as more fully set forth in the application to amend.

The subject order, among other things, authorized Transcontinental Gas Pipe Line Corporation (Transco) to sell natural gas to Greenwood. Said order allocated 5,407 Mcf per day to Greenwood and Honea Path, which volume included 690 Mcf per day for Honea Path. Piedmont states that the allocation for Honea Path is part of the volume in the agreement between Greenwood and Transco and is delivered, together with Greenwood's gas, at the existing delivery point for Greenwood. Such gas has been transported to Honea Path by Greenwood at a charge of 3.5 cents per Mcf and sold to the then distributor in Honea Path, The Natural Gas Company of Western Carolina (Western Carolina).

The application indicates that Piedmont has acquired the assets of Western Carolina and is now operating the distribution system and rendering natural gas service in Honea Path. Therefore, Piedmont requests herein that the 690 Mcf of daily allocation for Honea Path be transferred to Piedmont. Piedmont states that it will execute a new service agreement with Transco providing for the subject allocation, and that Greenwood will execute a new service agreement with Transco to exclude the allocation for Honea Path. Piedmont states further that the transportation arrangement with Greenwood will remain the same.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on April 27, 1963 (28 F.R. 4215). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued May 28, 1954, in Docket No. G–1277, *et al.*, be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued May 28, 1954, in Docket No. G-1277, *et al.*, be and the same is hereby further amended to transfer to Piedmont 690 Mcf of the 5,407 Mcf of daily allocation of natural gas to the communities of Greenwood and Honea Path, South Carolina, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP63-204

ORDER DENYING MOTION FOR RECONSIDERATION AND REHEARING

(Issued June 4, 1963)

On May 8, 1963, Transwestern Pipeline Company (Transwestern) filed a motion for reconsideration and rehearing of our Letter Order, issued on May 3, 1963, denying Transwestern's application for a temporary certificate of public convenience and necessity filed on April 9, 1963. In denying the temporary certificate, the Commission stated:

> * * * in view of the nature of the underlying proposal a grant here would be inconsistent with its policy as enunciated in Section 2.57 of our Rules of Practice and Procedure and that the allegations purporting to show emergency conditions within the meaning of Section 7(c) of the Natural Gas Act are insufficient to outweight such consideration. Accordingly, Transwestern Pipeline Company's request for a temporary certificate is denied.

Transwestern urges us to reconsider our denial on the grounds that their proposed expansion calls for a relatively small expenditure, amounting to $4,992,000, and that the only opponent to the issuance of a temporary, El Paso Natural Gas Company (El Paso),[1] does not expressly contend that there is not an emergency need for the additional gas Transwestern desires to sell to Pacific Lighting Gas Supply Company (Pacific Lighting). Further, Transwestern argues that its proposed expansion comes within the Commission's definition of "comparatively minor enlargements or extensions of an existing pipeline system" which may be temporarily certificated by the Commission in its exercise of the Section 7(c) emergency powers of the Natural Gas Act. In this connection, Transwestern notes that temporary certificates have issued in recent cases authorizing the construction of facilities costing far more than those Transwestern proposes to install.

The nature of the emergency prompting Transwestern's application for a temporary is stated generally to be that the additional gas it seeks to sell to Pacific Lighting "is required to meet the 1963-1964 winter requirements and to avoid excessive curtailment". Also, Transwestern alleges that it has a burdensome "oversupply of gas" which it has paid for but has not taken from certain producers.

The curtailment, as we understand it, refers entirely to the possible reduction of deliveries of gas to interruptible customers now being served under rate

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[1] El Paso filed a petition to intervene and a motion opposing Transwestern's request for a temporary certificate on April 24, 1963.

schedules which were designed in anticipation of a certain amount of curtailment. The curtailment referred to by Transwestern does not suggest to us potential cutbacks in deliveries to firm customers.[2] The circumstances of increased interruption of service to interruptible customers and the existence of currently excessive supplies of gas do not establish an emergency of such proportions so as to outweigh the desirability of a hearing prior to the issuance of a certificate which may conceivably be prejudicial to the economic interests of El Paso, an opponent to the proposals as now framed by Transwestern. *Cf. Virginia Petroleum Jobbers Association* v. *Federal Power Commission*, 265 F. 2d 364, 367 (D.C. Cir., 1959).

Specifically, El Paso raises rate design issues related to the certificate proposals as well as issues concerning the dependency of Transwestern's proposed rates upon the outcome of Transwestern's application in Docket No. G–20464, *et al.*, and asserts that there is a need to establish the accuracy of the design of the facilities Transwestern seeks to install.

From this it is apparent that the size of the proposed expansion, standing alone, cannot be a controlling factor in our decision to reject the instant request for temporary authorization. The appropriateness of the issuance of a temporary is not only determined by the dollar amount proposed to be expended but also by the total scope and impact of the project upon all concerned. Accordingly, we believe that the public interest requires that contentions raised in El Paso's opposition to Transwestern's project and such other issues as may arise, including those related to market requirements, must be resolved on the basis of an evidentiary record prior to the issuance of a certificate of public convenience and necessity here.

The Commission orders:

Transwestern Pipeline Company's motion for reconsideration of the Commission's Letter Order of May 3, 1963, is therefore denied.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

UNITED FUEL GAS COMPANY, DOCKET NOS. G-12195, G-16316, G-16815, AND G–18420

ORDER MODIFYING LETTER OF DIRECTION

(Issued June 5, 1963)

On May 6, 1963, United Fuel Gas Company filed an Application for Rehearing of a Commission letter order of April 5, 1963, which directed United Fuel to pay to one of its customers, Luther Lusher, the full refundable amount owing to Lusher under the terms of the Commission orders in the various dockets. In a report of compliance filed on February 22, 1963, United Fuel had announced the intention of setting off the refund due Lusher, in the amount of $635, against alleged unpaid gas bills totalling $808. United Fuel's Application for Rehearing states that Lusher has subsequently paid $160 of the latter amount, but has

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[2] Pacific Lighting Corporation, the parent corporation of Pacific Lighting Gas Supply Company, recently reported to its stockholders that, "During 1962 supplies of natural gas were ample for all firm customers and the System met about 85 percent of the fuel requirements of interruptible customers." See Pacific Lighting Corporations' *Supplement to the Annual Report for 1962*, p. 4.

refused to pay the remaining $648, which United Fuel contends to be owing for gas taken in April, 1961. In a response to United Fuel's motion for stay of the Commission's April 5, 1963 order, Lusher has denied that he owes the company any money at this time.

United Fuel's Application for Rehearing contends that "the Commission's order is contrary to the law applicable to the right of United to set off funds in its hands against the debts owed United by Luther Lusher." In our view, however, this case illustrates the problems that would arise if we permitted a pipeline company to discharge a refund obligation by way of a set-off. Lusher denies that there is any debt owed by him to be offset against refunds by United Fuel. The Commission would be faced with the alternatives of either (1) permitting set-off whenever the pipeline alleges the existence of a bona-fide claim against the purchaser, regardless of what the purchaser may have to say in reply on the merits of the pipeline's claim or (2) undertaking ourselves to adjudicate the merits of the pipeline's claim, which would impose upon the Commission a judicial role that is entirely unrelated to the responsibilities which it bears in administering the Natural Gas Act.

It appears to the Commission that the most reasonable solution in this case would be for us to stay the effectiveness of the direction contained in the April 5, 1963 letter for a period of thirty days and thereafter if, and on the condition that, United Fuel, within that period, institutes suit on its claim against Lusher in a court of competent jurisdiction and certifies to the Commission that it has done so. It appears that this course of action will cause the least possible alteration in the position of the parties *vis a vis* one another, while at the same time it gives United Fuel adequate security for the satisfaction of its claim to the extent that it turns out to be justified. If the judicial proceedings result in a final judgment favorable to United Fuel, it will be permitted to set-off against the refund amounts. If, on the other hand, United Fuel is unsuccessful in court, it should then make the refunds with additional interest, covering the period up to the date of actual payment to Lusher.

The Commission orders:

(A) The direction contained in the Commission's letter order of April 5, 1963, is stayed for a further period of thirty days from the date of this order. If, before the end of this thirty-day period, United Fuel shall have certified to the Commission that it has instituted suit against Luther Lusher in a court of competent jurisdiction on the claim specified in its Application for Rehearing, the direction shall be further stayed until fifteen days after final judgment has been rendered in the judicial proceeding.

(B) In all other respects, United Fuel's Application for Rehearing is denied.

THE OHIO FUEL GAS COMPANY, DOCKET NO. CP62-153

ORDER ADOPTING INITIAL DECISION OF PRESIDING EXAMINER AND DENYING REQUEST FOR ORAL ARGUMENT

(Issued June 7, 1963)*

Syllabus

1. Commission *states* that effect of proposed realignment appears to be elimination of potential discrimination between consumers in Ohio—since their rates will all have same starting point of FPC-approved wholesale rates. P. 1136.

*Initial decision appears on page 1136.

2. Fact that relatively limited expenditure by Ohio Fuel will increase its cost-of-service in minor degree, does not appear to require rate inquiry in certificate proceeding. P. 1136.
3. Commission *issues* certificate of public convenience and necessity under Section 7, of the Natural Gas Act and *authorizes* abandonment under Section 7(b) of the Act. P. 1136; 1144.

W. F. Laird, Ralph N. Mahaffey, William C. Hart and *John F. Sisson* for the Ohio Fuel Gas Company

Julian de Bruyn Kops and *William E. Herron* for the Dayton Power & Light Company

C. Howard Johnson for the City of Columbus, Ohio

Walter E. Beckjord and *Richard H. Rhein* for the Cincinnati Gas & Electric Company

James D. Nestroff and *Reno Riley* for the City of Toledo, Ohio

James W. Farrell and *Paul L. Doppes* for the City of Cincinnati, Ohio

David B. Ward for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, and Harold C. Woodward.

By examiner's decision issued April 3, 1963, the presiding examiner issued an order granting The Ohio Fuel Gas Company (Ohio Fuel) authority to abandon by sale to Columbia Gas of Ohio (Columbia of Ohio) certain transmission facilities. The examiner's order also directed the issuance of a certificate of convenience and necessity to Ohio Fuel to construct and operate natural gas facilities consisting of 97 measuring and regulating stations and to sell and deliver natural gas to Columbia of Ohio for resale. This authority was granted subject to Ohio Fuel's obtaining the required approval from the Securities and Exchange Commission.

In substance, the examiner's decision approved one step of a proposed realignment of the Columbia Gas System. This plan is designed ultimately to locate all jurisdictional activity of the Columbia Gas System in a single interstate company, and all retail activities in individual intrastate companies, subject only to State jurisdiction. Thus, here Ohio Fuel, a subsidiary of the Columbia Gas System, will spin off its retail gas activities in the State of Ohio to a newly formed subsidiary of the Columbia Gas System. Ohio Fuel will retain only wholesale operations for itself.

Detailed exceptions have been filed to the examiner's decision and order by two Ohio cities, Columbus and Toledo (Cities). The Cities urge that the application is premature, since the Columbia Gas System has not spelled out the full details of its proposed realignment; that this will increase rather than reduce the number of companies in the Columbia Gas System, contrary to the simplification argument offered for the realignment; that the Cities will lose bargaining power over retail rates, since wholesale rates will be set exclusively by the Federal Power Commission without the Cities being able to bargain as to ultimate rates with a company doing both wholesale and retail business; that Ohio Fuel's fair rate of return should be between 5.75 percent and 6 percent, and certainly not above the 6.42 percent determined in Ohio Fuel's Docket No. G–20273, but that under the proposed plan Ohio Fuel's rate of return may be 6.5 percent or higher; etc.

In addition, the Cities, by motion filed April 30, 1963, requested the Commission to provide for a full oral argument, urging that this was necessary because the examiner had failed properly to consider all legal issues.

We have carefully considered the exceptions urged to the examiner's decision, but we do not find them persuasive. The argument by the Cities that the appli-

cation is premature appears to turn primarily over a dispute as to how detailed a description the Columbia System must set out in advance with respect to its proposed realignment. The general plan has been made available, and most of the missing detail appears to be of the sort that has to be filled out as each step of the plan is fully developed.

Although the Cities urge that their bargaining power will be injured under the proposed realignment, they have made little showing in fact of potential injury or discrimination. Indeed, the only effect of the realignment would appear to be to eliminate potential discrimination between consumers in Ohio, since their rates will all have the same starting point of FPC-approved wholesale rates.

There is no substance to such contentions by the Cities as that this is a step backward involving the creation of an additional company, for the net overall effect will ultimately be to reduce the number of companies and to simplify the Columbia System. In the case of the *Manufacturers Light and Heat Company*, Docket No. CP61–60 (1961), 26 FPC 537, we approved a similar application by a Columbia subsidiary to dispose of its retail business to another corporation while retaining the wholesale business.

Furthermore, the examiner's rejection of the effort by the Cities to turn the present certificate application into a rate case appears to be sound. The fact that there will be a relatively limited expenditure by Ohio Fuel which will increase its cost-of-service in a minor degree does not appear to require a rate inquiry by the Commission in this certificate proceeding.

For similar reasons, no ground appears for granting oral argument herein.

The Commission finds:

(1) The examiner's decision and order herein are fully supported by the record.

(2) No facts and circumstances have been set forth sufficient to warrant our granting the oral argument requested by the Cities of Columbus and Toledo.

The Commission orders:

(A) The initial decision of the presiding examiner on April 3, 1963, is adopted as the decision of the Commission in this proceeding as of the date of this order.

(B) The request for oral argument is hereby denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATION FOR ABANDONMENT OF FACILITIES AND FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 3, 1963)

KURTZ, *Presiding Examiner:* This proceeding involves an application by The Ohio Fuel Gas Company (Ohio Fuel) under Section 7 (b) and (c) of the Natural Gas Act. Ohio Fuel, an Ohio corporation having its principal place of business in Columbus, Ohio, is a natural gas company within the meaning of the Natural Gas Act and it seeks an order authorizing abandonment by sale of certain gas transmission facilities in the State of Ohio to Columbia Gas of Ohio, Inc. (Columbia of Ohio) an Ohio corporation having its principal place of business in Columbus, Ohio. Columbia of Ohio upon the acquisition and reclassification of the properties described in the application and with the gas distribution properties presently owned by Ohio Fuel will become a public utility engaged in the retail distribution of natural gas solely within the State of Ohio. Ohio Fuel also requests the issuance of a certificate of public convenience and necessity authorizing the construction and operation of 97 addi-

tional measuring stations and the sale and delivery of natural gas at wholesale to Columbia of Ohio for resale. Both Ohio Fuel and Columbia of Ohio are wholly-owned subsidiaries of Columbia Gas System, Inc. (Columbia), which is a registered holding company under the Public Utility Holding Company Act of 1935. Columbia owns all of the outstanding securities of these two companies.

The City of Cincinnati, Ohio, The Cincinnati Gas & Electric Company, and Dayton Power and Light Company support the application. None of Ohio Fuel's present wholesale customers have opposed the application and of the communities now served at retail by Ohio Fuel only the Cities of Columbus and Toledo, Ohio (Protestants) have opposed the application. The staff while it supports the application recommends that conditions be attached to the certificate requiring Ohio Fuel to file a cost-of-service study based on the first twelve months of operation after the effectuation of the realignment and that the certificate shall have no force and effect until such time as the Securities and Exchange Commission issues the requisite authorization.

At the present time Columbia controls 19 subsidiary companies, which are wholly-owned except for one small gas producing company. Of these 19 companies 15 are gas utilities serving at wholesale and retail in the States of Ohio, Kentucky, West Virginia, Pennsylvania, New York, Virginia, and Maryland, and at wholesale in the District of Columbia.

This application is another step in Columbia's plan for the realignment of the System's companies. The realignment plan has two objectives. The first is the redistribution of the facilities and operations of the Columbia System so that, to the extent possible: (1) production, storage, and transmission facilities used to transport gas in interstate commerce and to service wholesale business shall be owned and operated by one corporation subject to the jurisdiction of the Federal Power Commission and (2) facilities located in each state and used solely in making retail sales to consumers shall be owned and operated by a single corporation subject to the full jurisdiction of the public utility commission of that state as to rates and service. The second objective is to complete the long range simplification program to produce a corporate structure consisting of the minimum number of companies required to carry on the System's business under existing conditions.

The corporate complex of Columbia in 1930 consisted of some 60-odd companies and the simplification of this System was both voluntary and in compliance with the Public Utility Holding Company Act of 1935. The present corporate realignment program was discussed in 1955 with the Commission and the regulatory authorities in each of the seven States in which Columbia, through its subsidiaries, provided natural gas service at retail and wholesale. The following steps have been taken to-date to carry out the realignment program.

On September 10, 1956, in Docket Nos. G–9694 and G–9695, the Commission approved the Presiding Examiner's decision which authorized Natural Gas Company of West Virginia to transfer certain of its properties near the Ohio-Pennsylvania border to The Manufacturers Light and Heat Company after which Natural Gas Company was merged into and with The Ohio Fuel Gas Company. The same order granted the application in Docket No. G–9689 which authorized Central Kentucky Natural Gas Company to transfer its storage and transmission properties to Kentucky Gas Transmission Corporation, an interim corporation organized for that purpose.[1]

[1] 16 FPC 437.

In 1957, pursuant to the authorization granted in Docket No. G–12127, Central Kentucky Natural Gas Company acquired the Kentucky retail distribution properties of United Fuel Gas Company, and thereafter changed its name to Columbia Gas of Kentucky, Inc.[3]

On May 29, 1958, in Docket No. G–13058, the Commission authorized United Fuel Gas Company to transfer its Ohio distribution facilities to The Ohio Valley Gas Company, an interim Ohio distribution company;[4] and on October 21, 1958, in Docket No. G–14691, the Commission authorized The Manufacturers Light and Heat Company to transfer its Ohio retail facilities to the same company.[5]

Cumberland and Allegheny Gas Company was authorized to transfer its Maryland retail facilities to Columbia Gas of Maryland, Inc. by an order of the Commission issued August 15, 1960, in Docket No. G–17226.[6]

On September 21, 1961, in Docket No. CP61–60, the Commission issued an order authorizing the Manufacturers Light and Heat Company to transfer its Pennsylvania retail facilities to Columbia Gas of Pennsylvania, Inc. and authorizing Manufacturers to sell and deliver natural gas to Columbia of Pennsylvania for resale at the rates contained in Manufacturers' CDS–1 FPC Tariff. The order also permitted Manufacturers to abandon certain of its transmission facilities by sale to Columbia of Pennsylvania. The order also found that public convenience and necessity required the construction and operation of measuring and regulating stations at a cost of $389,000 and issued a certificate authorizing their construction.[6]

In each of the steps of the realignment plan set forth above, the necessary approval of the State regulatory agency having jurisdiction was obtained. In no case has any regulatory commission refused to approve a step in the realignment plan.

The latest order of the Commission relating to the realignment program of Columbia was issued on January 16, 1963, in Docket No. CP61–107, Opinion No. 377, involving Amere Gas Utilities Company, Atlantic Seaboard Corporation, and United Fuel Company, 29 FPC 90.

THE PRESENT APPLICATION

By this application Ohio Fuel will sell its facilities used in making retail sales in Ohio to Columbia of Ohio. Ohio Fuel will retain its production, transmission and underground storage facilities and will remain a natural gas company subject to the jursdiction of this Commission. It will continue to make sales for resale to its present wholesale customers and will make sales for resale to Columbia of Ohio. In addition to the authorization herein requested, the order of June 6, 1962, by the Public Utilities Commission of Ohio approving this realignment must become final[7] and approval must be obtained from the Securities and Exchange Commission.

Ohio Fuel serves approximately 728,839 residential customers, 54,710 commercial customers, and 1,886 industrial customers. The distribution facilities used by Ohio Fuel in making sales direct to customers are to be transferred to Columbia of Ohio. Ohio Fuel does not propose to retain any retail customers. The principle followed in identifying the property to be transferred to Columbia of Ohio

[3] 18 FPC 400.
[4] 19 FPC 848.
[5] 20 FPC 536.
[6] 24 FPC 254.
[6] 26 FPC 537.
[7] Exhibit 1. The order is now on appeal to the Supreme Court of Ohio.

was to separate the transmission plant from the distribution plant at the outlet side of the town border or main line industrial measurement setting where gas will be delivered to Columbia of Ohio by Ohio Fuel.

The cost of the property transferred and the amount to be paid by Columbia of Ohio on the closing date will be determined by the aggregate book value on the books of Ohio Fuel of its assets and properties used in furnishing retail natural gas service less the related reserves and less the aggregate amount recorded on the books of Ohio Fuel of the liabilities and obligations assumed by Columbia of Ohio.

If the proposed transfer to Columbia of Ohio had occurred on June 30, 1961, the cost of the assets transferred to Columbia of Ohio would have been $133,251,-146. The net book cost of the utility plant to be transferred to Columbia of Ohio would be $124,863,566, and the net book cost of the utility plant to be retained by Ohio Fuel would be $141,847,195.

Columbia of Ohio will reimburse Ohio Fuel for the assets and properties sought to be transferred by the issuance and delivery of shares of its $25 par value common stock at par and installment promissory notes in an amount equal to the property transferred to it except for the net amount of the utility service accounts receivable. The number of shares of common stock and the principal amount of installment notes issued by Columbia of Ohio will each represent approximately 50 percent of the net book value of the property acquired from Ohio Fuel.

Columbia of Ohio will open on its books an account payable to Ohio Fuel in the amount of the utility service accounts receivable (the accounts arising from the sale of gas at retail directly to consumers) less the amount of the reserve for uncollectible accounts applicable thereto and Columbia of Ohio will pay Ohio Fuel in cash at least 50 percent of such net amounts within 30 days after the closing date, at least 75 percent of such amount within 60 days after the closing date, with the entire amount to be paid within 90 days after the closing date.

Based on the net book value of the assets as of June 30, 1961, Columbia of Ohio would have issued 2,453,976 shares of its $25 par value capital stock at par to Ohio Fuel and $61,351,000 of installment promissory notes.

Ohio Fuel will deliver to Columbia the installment promissory notes received from Columbia of Ohio in prepayment of an equal principal amount of the installment promissory notes of Ohio Fuel owned by Columbia. In connection with such prepayment, Ohio Fuel will select and prepay installment promissory notes in such proportions that, after all prepayments shall have been effected, there will not have been any change in the averages, weighted as to principal amounts, of the interest rates borne by and the maturities of the installment promissory notes of Ohio Fuel owned by Columbia. Ohio Fuel will deliver to Columbia the shares of common stock received from Columbia of Ohio and in consideration therefor Ohio Fuel will receive from Columbia shares of common stock of Ohio Fuel having an equal aggregate par value. Ohio Fuel will retire the shares of common stock received from Columbia.

The installment promissory notes issued by Columbia of Ohio will have, to the extent practicable, the same terms, including dates of maturity, dates of installment payments and dates of interest payments, and bear interest at the same rates per annum as the installment promissory notes of Ohio Fuel owned by Columbia which will be prepaid by Ohio Fuel.

The construction and operation of the 97 town border measuring and regulating stations will be at an estimated cost of construction of $516,078. The estimated annual cost of operation of these stations is $47,263. Such stations are necessary for the measurement of gas delivered by Ohio Fuel to Columbia of Ohio. No question has been raised as to the reasonableness of the estimated

cost of these facilities or the ability of Ohio Fuel to finance their construction.

In order that Columbia of Ohio will own the facilities downstream of measurement serving its retail markets it is necessary on four instances to transfer certain transmission facilities to Columbia of Ohio which Ohio Fuel seeks authority to abandon.

An additional small portion of Ohio Fuel's transmission plant will be transferred to Columbia of Ohio because its function will be changed from transmission to distribution. The net book cost of these facilities at June 30, 1961, was approximately $369,000 out of the total net book cost of the transmission plant of $85,000,000. This is essentially a routine reclassification of property and is not specifically occasioned by the realignment program.

Approximately $24,000 of distribution mains will be retained by Ohio Fuel because after realignment they will be serving a transmission function. The town border measuring and regulating stations already in place, which will be used to measure gas delivered by Ohio Fuel to Columbia of Ohio, are presently included as part of distribution plant but will be retained by Ohio Fuel and reclassified as transmission plant. The net book cost of such station at June 30, 1961, was approximately $2,200,000. Ohio Fuel will deliver natural gas to Columbia of Ohio at approximately 526 delivery points pursuant to a standard form service agreement at the present wholesale rates set forth in its FPC Gas Tariff. There will be no change in the operation of Ohio Fuel relating to the receiving of gas from its suppliers and in the utilization of its production, storage, and transmission facilities.

The program of corporate realignment, of which the present application is a step therein, will result in a more simple and economical operation, particularly as to corporate accounting, management, and regulatory matters, all to the benefit of the ultimate consumer. The simplification of the regulatory process is in and of itself sufficient justification for the realignment. At the present time when substantial increases in gas supply costs are asked for by the pipeline suppliers to Columbia subsidiaries, the effect of which would be reflected throughout the whole system, eight rate application filings are required with the Commission as against one after the realignment. Thus, the rate proceedings will be expedited. This simplification of the regulatory process will also follow under the present application in that there will be eliminated the allocation problem as to common plant and operating expenses in the establishment of the cost of service, permitting more ready determination of the costs associated with the wholesale and retail business. Such benefits have heretofore been recognized by the Commission, and the following statement in the above-mentioned order of September 10, 1956, is equally applicable here: (16 FPC 447)

> The transactions proposed in dockets G–9694 and G–9695 are part of a long series of steps which have been proceeding for a number of years in a general effort to reduce the number of operating companies serving Columbia Gas System customers and thus simplify the system's operations by reducing bookkeeping costs, eliminating intercompany transactions, thus reducing the number of regulatory relations. The transactions proposed in docket G–9689 would separate business subject to the jurisdiction of the State Commission from that subject to the jurisdiction of Federal Power Commission. The hope is expressed that this kind of separation can ultimately be effected throughout Columbia Gas System.

Protestants claim the instant application is premature in that it should be considered along with an application encompassing the entire realignment program. Columbia has disclosed its ultimate plan in detail and outlined the ob-

jectives to be accomplished, together with the steps taken to date which disclose an orderly consummation of the realignment program. The choice of procedure rests with Columbia and its election to proceed with separate applications in and of itself is not grounds for a denial. The justification for the step approach to the realignment as summarized by Columbia's Vice President for Finance is reasonable and is as follows:

> The processing of a realignment program as comprehensive as Columbia's is not a simple matter, as you may well imagine. It has to be taken up step by step, and each corporation studied carefully to determine which of its properties should be in one company, which should be in another company, the tax situation has to be studied, the corporate situation has to be studied, and there are many, many details. Therefore, the only way in which we can approach this is on an orderly basis, one step at a time.

The Protestants contend that the realignment here proposed will place them in an adverse position with regard to the negotiation of retail rates. To have any validity this claim must be supported by a showing of injury to the consumer. No such showing has been made in this proceeding. The present retail rates were negotiated by these Protestants with Ohio Fuel in July 1960 and resulted in a four year ordinance and the rates were then considered by the Cities to be fair and reasonable. Such rates will remain in effect until July of 1964 and in the present proceeding no studies were made by the Protestants to determine if their present retail rates are too high or too low. While no contention is made that the Commission is less able to fix a rate than the municipalities, it is claimed that the realignment leaves the Protestants in a poor "horse trading" position for negotiating rates. From the pro forma statement of revenue, expenses and income exhibits introduced by the Protestants reflecting estimated operations for the year 1963, it is disclosed that the transmission operations will earn a less return than the retail operations. The Protestants' exhibts disclose a return on the transmission operations of Ohio Fuel of 6.54 percent and for the retail operations for Columbia of Ohio of 8.4 percent, and after applying an income tax adjustment to exclude taxes not paid the return is shown as 7.1 percent and 9.0 percent, respectively. Thus it appears that the advantage to the consumer is not the method advocated by Protestants but rather that used by the Commission.

The Protestants state that the wholesale rate of Ohio Fuel on file with the Commission is not presently used to determine the cost of gas at the city gate for the retail market by the Public Utilities Commission of Ohio which has the duty to establish just and reasonable rates in a proper proceeding when the municipality and the utility cannot agree. This statement does not coincide with the practice as stated by the Public Utilities Commission of Ohio in the aforesaid order of June 6, 1962, approving the present proposal, *to-wit:*

> One of the arguments advanced by the protestants against approval of the realignment proposal is that granting the application in effect would perpetuate a Commission practice of fixing the cost of gas at the city gate on the basis of wholesale rates fixed by the Federal Power Commission. Protestants believe that this practice is erroneous because the Federal Power Commission arrives at a wholesale rate while dealing with only about one-fourth of the company. While the protestants did not explain why they feel this fact makes the practice erroneous it is apparently because they believe that if this Commission were to apply the rate to the other parts of the system as a "gate rate" it could result in more than 100% of the cost of gas being considered as part of the cost of service of Ohio Fuel Gas depending upon the method of allocation used.

The protestants were not able, however, to suggest any other method of arriving at cost of gas for part of the system. In any event, as an argument against realignment, the argument wholly fails because the very sense of the proposal for realignment is to put 100% of the wholesale business under Federal Power Commission jurisdiction.

The protestants apparently believe that if no allocations were necessary the unit cost per Mcf of gas, based on 100% of the wholesale business, would be substantially less. The Commission does not agree with this contention. The Commission cannot help but feel that protestants' belief, that a lower unit cost would result if there were no necessity of allocation, merely argues the more for doing away with the necessity of allocation by permitting this realignment.

The protestants' witness further stated that the rate fixed by the Federal Power Commission does not represent cost but on cross-examination could not state in what respect it would not represent cost and then admitted he did not know what it represented because he had not studied it.

Under Ohio law the rate base in rate proceedings is based on the reproduction cost new less depreciation value of the utility's property. If the Ohio Commission did not use the wholesale rate approved by this Commission to determine the cost of gas at the city gate and made its own determination, the allowance for a fair return would be based upon the reproduction cost new less depreciation value of Ohio Fuel's production, transmission and underground storage plant used in furnishing retail service. This would undoubtedly permit Ohio Fuel to realize more rate of return dollars than the amount included in its wholesale rate which is based on a net original cost rate base.

The protestants take the position that the Commission in this certificate proceeding must pass upon the reasonableness of Ohio Fuel's present wholesale rate. The staff, while opposing this position on the grounds that the proceeding should not be turned into one involving rates, recommend that a condition be attached to the order granting the certificate requiring Ohio Fuel to file with the Commission a cost of service study based upon the first twelve months of operation after the realignment here proposed becomes effective. Ohio Fuel objects to a determination of the reasonableness of its wholesale rate in this certificate proceeding under Section 7 of the Act. It takes the position that its wholesale rate can only be modified after an appropriate proceeding commenced under Section 4 or Section 5 of the Act.

The rates to be charged by a natural gas company may under certain circumstances become an issue in Section 7 proceedings. In *Oklahoma Natural Gas Co. v. FPC*, 257 F. 2d 634, cert. dismissed 358 U.S. 948, the Court in sustaining the Commission's refusal to pass on the reasonableness of a rate in that certificate proceeding pointed out that the Commission is vested with discretion to attach terms, including rate conditions, to certificates issued and in the absence of an abuse of that discretion the courts will not interfere. Further, the Commission cannot be required to convert every certificate proceeding into a rate proceeding.

In the instant proceeding, Ohio Fuel's pro forma statement of revenues, expenses and income which was based upon its 1962 operating budget adjusted for estimated customer growth and additions to plant for 1963, shows a rate of return of 6.5 percent for the first year of operation under the realignment. Likewise, the pro forma statement submitted for Ohio Fuel's retail operations, which will be conducted by Columbia of Ohio, shows an 8.4 percent return. Protestants contend that as of today based upon their rate of return study the return for Ohio Fuel should not exceed six percent. Also, as heretofore pointed out, that Ohio Fuel after realignment will earn a return of 6.54 percent on the wholesale

business and Columbia of Ohio on the retail business will earn 8.4 percent, and if an adjustment is made in the operating expenses to exclude income taxes not paid (accelerated depreciation) the return is 7.1 percent and 9 percent, respectively.

Ohio Fuel's present wholesale rate applies to approximately 20 percent of its present sales and by its terms will be applicable to the sales made to Columbia of Ohio. This rate resulted from a rate proceeding instituted by the Commission in which an order was issued on July 28, 1961, conditionally approving a rate settlement agreement with modifications and there was reserved for later determination two issues, one being a possible decrease in Federal income tax due to a claimed 1959 deduction relating to the Ohio property tax and the other was the normalized tax treatment in the cost of service, concerning accelerated depreciation under Section 167 of the Internal Revenue Code. In that order a rate of return of 6.42 percent was determined reasonable, being a reduction from the 6.5 percent stated in the agreement by reason of applying a 1.5 percent return to the reserve for deferred taxes.

Ohio Fuel's wholesale rate, as to whether or not it is the lowest reasonable rate, has been and is now a matter of continuous interest to the Commission. Rate proceedings involve many factors and the showing here made is insufficient to justify the naming of reasonable rates, particularly when the specific result cannot be determined. The Commission's conclusions as set forth in its *Opinion No. 373, Atlantic Seaboard Corporation*, Docket No. G–17774, 28 FPC 1145, 1148, is equally applicable here, *to-wit:*

> It is well settled that a certificate proceeding under Section 7 of the Natural Gas Act should not assume the character of a rate proceeding under Section 5(a). 'The Commission's exercise of its conditioning power must be reasonable and have a rational basis in terms of public convenience and necessity.'
>
> Further, in the Seaboard Case we stated, 'Obviously, Section 7 of the Act is distinctively the certificate section of the statute, and is designed to serve purposes fundamentally different from those of the rate provisions of Sections 4 and 5 of the Act. The proper administration of the Act demands a close adherence to the intended scheme of the statute; and the several objectives of the Act can best be achieved following the channels specifically designed for the attainment of each. So that, although in a proper case the element of price may be considered in passing on a certificate application under the Act, the principal place for consideration of matters of rate level is in rate proceedings.' [Citations omitted.]

Orderly procedure requires a termination of this certificate proceeding and it should not be the medium for the establishment of reasonable rates which would also follow under the staff's recommendation requiring the filing of a cost of service study. Such a condition is inconsistent with the staff's position that this certificate proceeding is not a proper one for the determination of reasonable rates. The Commission may at any time require Ohio Fuel to file such a study and after realignment the annual report of Ohio Fuel will reflect only jurisdictional operations, thus simplifying any determination of the earnings applicable to the wholesale business.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the record and the briefs filed in these proceedings, it is found and concluded, in addition to the findings and conclusions heretofore stated, that:

(1) The transmission facilities proposed to be abandoned by Ohio Fuel, as described in the application, are used in the transportation of natural gas in

interstate commerce, subject to the jurisdiction of the Commission, and the abandonment thereof by Ohio Fuel is subject to the requirements of subsection (b) of Section 7 of the Natural Gas Act.

(2) Such abandonment by Ohio Fuel, as hereinbefore described, is permitted by the public convenience and necessity, and should be permitted and approved as hereinafter ordered.

(3) The natural gas facilities consisting of 97 measuring and regulating stations proposed to be constructed and operated by Ohio Fuel, as described in the application as amended to conform to the proof submitted at the hearing, are proposed to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, as an integral part of Ohio Fuel's existing pipeline system and the operation thereof by Ohio Fuel is subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The proposed construction and operation by Ohio Fuel of the facilities described in the application as amended to conform to the proof submitted at the hearing, and the proposed sale and delivery of natural gas at wholesale by Ohio Fuel to Columbia Gas of Ohio, Inc. for resale are required by the public convenience and necessity and a certificate therefor should be issued.

(5) Ohio Fuel is able and willing to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.20) should attach to the certificate hereinafter issued, and to the exercise of the rights granted thereunder, and the authorization herein granted should be exercised within one year from the effective date of the final order herein.

ORDER

Wherefore, it is ordered, subject to review by the Commission, that:

(A) Ohio Fuel be and it hereby is granted permission and approval for the abandonment by sale to Columbia of Ohio of the transmission facilities as requested in the application herein.

(B) A certificate of public convenience and necessity be and the same hereby is issued to Ohio Fuel authorizing it to construct and operate the facilities referred to in the above finding (3), and to sell and deliver natural gas to Columbia of Ohio for resale.

(C) The general terms and conditions referred to in the above finding (6) of the Commission's Regulations under the Natural Gas Act shall attach to the certificate herein issued, and to the exercise of the rights granted thereunder.

(D) The authorization herein granted to Ohio Fuel shall be exercised within one year from the effective date of the final order herein.

(E) The authority granted in paragraphs (A) and (B) shall not become effective until Ohio Fuel has obtained the required approval from the Securities and Exchange Commission and a certified copy of such order shall have been filed with the Commission.

ALVIN A. KURTZ,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

POTOMAC EDISON COMPANY, DOCKET NO. E-7104

ORDER INSTITUTING INVESTIGATION AND PROVIDING FOR HEARING

(Issued June 7, 1963)

Data currently available to this Commission indicate the need for a formal investigation concerning the lawfulness of Electric Rate Schedule Tariff "WS", filed pursuant to Section 205 of the Federal Power Act by Potomac Edison Company (Potomac Edison), Hagerstown, Maryland.

Potomac Edison's "WS" Rate Schedule is a tariff schedule for wholesale service and is available throughout the entire territory served by Potomac Edison to customers who purchase electric energy for resale at voltages of 2,400 and above. At present, two municipalities (Thurmont, Maryland, and Williamsport, Maryland) and three private utilities, including two subsidiaries of Potomac Edison (Potomac Light and Power Company and South Penn Power Company) and one affiliate (Monongahela Power Company), receive service under the "WS" tariff schedule.

The tariff has a demand and energy block type of rate. Charges for demand vary from $3.20 per kw per month down to $2.15 per kw per month and the energy charges vary from 8.4 mills per kwh down to 4.4 mills per kwh. An additional charge for KVAR required by the customer is also listed in the schedule. This charge is 20 cents per KVAR for KVAR's in excess of the first 25% of the monthly kw of demand and 40 cents per KVAR for KVAR's in excess of 50% of the monthly demand. The rate also contains a fuel adjustment clause with a heat rate based on 16,000 Btu per kwh. No distinction is made in the rates charged between customers served at transmission voltages and those served at lower voltages.

Review and analysis of available office data indicate that Rate Schedule "WS" may result in excessive rates or charges or may be unduly discriminatory, unduly preferential, or otherwise unjust, unreasonable and unlawful within the meaning of the Federal Power Act. Additional factual data necessary for a resolution of those questions must be obtained. Accordingly, it is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206, 304, 307, 308 and 309 thereof, that the Commission enter upon a hearing and investigation concerning the lawfulness of Potomac Edison's "WS" Rate Schedule Tariff described above; and that Potomac Edison be directed to submit cost and revenue data all in the manner as hereinafter provided.

The Commission orders:

(A) A public hearing shall be held concerning the lawfulness of Potomac Edison's "WS" Rate Schedule Tariff, as decribed above, at a time and place to be specified by further order of this Commission.

(B) Potomac Edison shall file, on or before September 9, 1963, cost and revenue data showing Potomac Edison's costs of rendering service to each wholesale for resale customer served under the Rate Schedule Tariff "WS" referred to in paragraph (A) above, calculated in accordance with applicable Commission rulings and utilizing, among other things, as the test period the calendar year 1962 showing both historical revenues and *pro forma* adjustments thereto, a prudent net investment rate base, and a fair rate of return thereon.

(C) The foregoing showing shall not preclude or limit any additional showing by Potomac Edison or others and shall be without prejudice to any future action taken by the Commission or its staff, or to any future position Potomac Edison or others may wish to take as to the significance of, or conclusions to be drawn from, the above factual showing.

(D) The foregoing showing shall be submitted in writing with sufficient copies to provide this Commission with six copies, to provide each State Commission affected with a like number of copies and to provide one copy each to all other parties as may be granted intervention in this proceeding.

(E) Notices of intervention or petitions to intervene in this proceeding may be filed with the Commission on or before July 15, 1963, in accordance with the Commission's Rules of Practice and Procedure (18 C.F.R. 1.8 and 1.37).

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PAUL F. BARNHART, ET AL., AND SOHIO PETROLEUM COMPANY, ET AL., DOCKET NOS. RI61–359 AND RI61–402

ORDER GRANTING IN PART AND DENYING IN PART MOTIONS TO MODIFY ORDER

(Issued June 10, 1963)

On March 18, 1963 and March 20, 1963, Paul F. Barnhart (Barnhart) and Sohio Petroleum Company (Sohio), respectively, filed separate motions to modify the order isued February 18, 1963, in the above-designated proceedings. In their motions Barnhart and Sohio request that the subject order be modified with respect to Docket No. RI61–359 to make J. Ray McDermott & Co., Inc. (McDermott) solely responsible for any refunds that may be required in Docket No. RI61–359, and to relieve Barnhart and Sohio of any obligations with respect thereto. Barnhart also requests that it be removed as a respondent in Docket No. RI61–359.

By the February 18, 1963 order Barnhart and Sohio were made co-respondents in Docket No. RI61–359 and Sohio was required to file an agreement and undertaking to assure refund of any excess charges in Docket No. RI61–359 for the period subsequent to June 28, 1962 with respect to those Barnhart rate schedules involved here which were redesignated as Sohio's rate schedules.[1] The order also provided that Barnhart's refund liability shall continue in Docket No. RI61–359 with respect to those rate schedules to which Sohio did not succeed, and also with respect to those rate schedules to which Sohio did succeed for the period prior to June 28, 1962. The background to this matter is set forth below.

The interests of McDermott, a signatory seller party to the subject gas purchase contracts, were covered under Barnhart's rate schedules prior to June 28, 1962[2] and subsequent to that date have been covered by rate schedules of either Sohio or Barnhart. On January 19, 1961 McDermott tendered for filing notices of change in rates to fourteen of Barnhart's rate schedules.[3] The proposed changes were applicable only to McDermott's interests in the properties involved here. All of the changes proposed by McDermott were suspended by

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[1] Sohio succeeded as of June 28, 1962 to the interest in leases covered by 8 out of 14 of Barnhart's rate schedules which relate to the proceeding in Docket No. RI61–359.

[2] Barnhart prior to June 28, 1962 was the operator of all of the properties involved here.

[3] On February 7, 1961 Barnhart ratified the filings as operator for McDermott.

Commission order issued in Docket No. RI61–359 until July 19, 1961 and until such further time as they were made effective in accordance with the provisions of the Natural Gas Act.

On January 24, 1962 McDermott filed a motion to place in effect, subject to refund, the proposed rates suspended in Docket No. RI61–359, and also filed therewith its agreement and undertaking to assure refunds of any excess charges with respect thereto. By Commission letter dated March 15, 1962, Barnhart was requested to ratify McDermott's motion and agreement and undertaking in accordance with the provisions of Sections 154.94 and 154.102 of the Commissions' Regulations. Those sections provide, *inter alia*, that the producer who has a rate schedule on file with the Commission must file all rate changes, motions, and refund assurances with respect to such rate schedule.[4] In compliance with the Commission's request, Barnhart ratified McDermott's filing but stated that "such ratification will not * * * impose any burden or obligation on Paul F. Barnhart either under the Natural Gas Act or otherwise". By the Commission's "Notice of Effectiveness of Proposed Rate Changes Under Undertakings to Assure Refund of Excess Charges", issued April 17, 1962, the subject motion and undertaking as ratified by Barnhart, were accepted for filing, and the proposed rates were required to be charged and collected as of March 1, 1962. Following Sohio's acquisition of some of the properties involved here, the order here complained of was issued on February 18, 1963.

In support of their motions, Sohio and Barnhart state they have no interest in Docket No. RI61–359 because the increased rates involved therein relate only to McDermott's interests in the properties covered by Sohio and Barnhart's rate schedules. They also point out that McDermott has filed an agreement and undertaking to assure refund of any excess charges ordered therein. They therefore contend that it is unnecessary to hold them responsible for those revenues which McDermott alone is collecting, subject to refund. Barnhart also states that it did not intend by its ratification of McDermott's agreement and undertaking to incur any obligation with respect thereto and in support thereof points to certain alleged reservations in its ratification.

We have in many other proceedings in which McDermott is a respondent accepted for filing McDermott's agreement and undertaking to assure refund of excess charges. Accordingly, there is no reason here for doubting McDermott's ability to make refunds in Docket No. RI61–359. We therefore conclude that it would be appropriate to grant Barnhart's and Sohio's motions insofar as they request waiver of the requirement in Section 154.102 of the Regulations that the independent producer making the rate filing also file appropriate refund assurance.

Barnhart was made a respondent in Docket No. RI61–359 because it was deemed to be the producer making McDermott's rate filings, in view of its ratification of McDermott's tenders, in accordance with the provisions of Sections 154.94 and 154.102 of the Regulations. The fact that Barnhart has no financial interest in the proceeding does not justify granting Barnhart's request that McDermott be substituted as respondent in Docket No. RI61–359. It is important in the administration of the Natural Gas Act that, except in special circumstances which are not present here, direct control should be exercised only over the producer having a rate schedule on file independent of the interest that he may have in a par-

[4] Even though McDermott is a signatory party to the contracts, he did not meet the requirements of the Commission's Regulations because he did not have separate rate schedules on file but instead was covered by Barnhart's rate schedule.

ticular proceeding, as provided by Sections 154.94 and 154.102 of the Regulations. We have no intention of unduly complicating proceedings by naming a party as respondent who is covered by another producer's rate-schedule.

One other matter remains to be disposed of here that has not previously been mentioned. Barnhart requested in its motion that it be removed as respondent in Docket No. RI61–402. Barnhart, however, has rate schedules on file relating to Docket No. RI61–402 to which Sohio did not succeed. Accordingly, it is a proper party in Docket No. RI61–402, even though it has not placed in effect, subject to refund, the proposed rates which pertain to such rate schedules. In the absence of a request for withdrawal of the proposed rates, and we do not construe Barnhart's motion to so request, there is no basis for terminating the proceeding insofar as it relates to Barnhart, because Barnhart still retains the right to make the proposed rates effective at some future time.

The Commission finds:

For the reasons heretofore stated it is in the public interest to grant in part and to deny in part the motions filed by Barnhart and Sohio.

The Commission orders:

(A) The Commission's order issued February 18, 1963 in Docket Nos. RI61–359 and RI61–402 is hereby modified with respect to Docket No. RI61–359 to make J. Ray McDermott & Co., Inc., solely responsible for any and all refunds that may be required in Docket No. RI61–359, instead of Paul F. Barnhart and Sohio Petroleum Company.

(B) Paul F. Barnhart's request that it be removed as a respondent in Docket Nos. RI61–359 and RI61–402 is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PACIFIC AMERICAN FISHERIES, INC., PROJECT NO. 1082

ORDER ACCEPTING SURRENDER OF LICENSE (MINOR)

(Issued June 10, 1963)

Application was filed February 11, 1963 by Pacific American Fisheries, Inc., licensee for minor Project No. 1082, for surrender of the license for the project formerly situated on Linkum Creek, a tributary to Kasaan Bay, in the First Judicial Division on Prince of Wales Island, near the Town of Kasaan, Alaska, and affecting lands of the United States within the Tongass National Forest.

According to the application, the licensee desires that the license be terminated because the high operating cost makes the operation of the cannery served by the project power economically unsound. The licensee's copy of the license instrument was returned with the application, and the annual charges under the license have been paid through December 31, 1962.

The U.S. Forest Service has advised that the lands formerly occupied by the project have been restored to a condition satisfactory to the Service and it has no objection to Commission acceptance of surrender of the license.

The *Commission finds:*

Acceptance of surrender of the license for the project is appropriate.

The *Commission orders:*

Surrender of the license for minor Project No. 1082 is hereby accepted, effective as of December 31, 1962.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SOUTHWESTERN PUBLIC SERVICE COMPANY, DOCKET NO. E-7038

ORDER ACCEPTING RATE SCHEDULE FOR FILING AND AMENDING ORDER INSTITUTING INVESTIGATION

(Issued June 10, 1963)

On May 13, 1963, Southwestern Pacific Public Service Company, Amarillo, Texas (Southwestern), submitted for filing as a rate schedule a new wholesale service agreement with Rita Blanca Electric Cooperative, Inc., Dalhart, Texas (Rita Blanca), designated as Southwestern Public Service Company Rate Schedule F.P.C. No. 48 (superseding Rate Schedule F.P.C. No. 24), and on May 24, 1963, a new wholesale service agreement with North Plains Electric Cooperative, Inc., Perryton, Texas, (North Plains), designated as Southwestern Public Service Company Rate Schedule F.P.C. No. 49.

The Commission, by Order issued May 15, 1962, suspended proposed rate schedule changes of 12 rate schedules of Southwestern for service to 12 rural electric cooperatives, instituted investigation as to the lawfulness of all rate schedules filed pursuant to § 205 of the Federal Power Act by Southwestern, and ordered a public hearing. By order issued May 17, 1963, the Commission fixed October 29, 1963, as the date for commencement of the hearing.

By order issued August 16, 1962, intervention was granted to Rita Blanca and North Plains, filing jointly with 13 other rural electric cooperatives.

The Commission finds:

(1) It is necessary and appropriate for purposes of the Federal Power Act, particularly Section 205 thereof, that Southwestern's Rate Schedules F.P.C. No. 48 and F.P.C. No. 49 be accepted for filing, to become effective June 13, 1963 and June 24, 1963, respectively, 30 days after filing.

(2) It is necessary and appropriate for purposes of the Federal Power Act, particularly Sections 205, 206, 304, 308, and 309 thereof, that the Order issued May 15, 1962, in this docket be amended to include in the list of rate schedules under investigation and to be considered at the hearing on October 29, 1963, the following designated rate schedules:

Southwestern Public Service Company, Rate Schedule F.P.C. No. 48 (Superseding Rate Schedule F.P.C. No. 24).

Southwestern Public Service Company, Rate Schedule F.P.C. No. 49 (Superseding Rate Schedule F.P.C. No. 25).

The Commission orders:

(A) Southwestern Public Service Company Rate Schedules F.P.C. No. 48 (superseding Rate Schedule F.P.C. No. 24) and F.P.C. No. 49 (superseding Rate Schedule F.P.C. No. 25), are hereby accepted for filing, and shall become effective on June 13, 1963 and June 24, 1963, respectively.

(B) The Order issued May 15, 1962, in Docket No. E-7038, is hereby amended to include in the list of Southwestern's rate schedules under investigation and to be considered at the hearing on October 29, 1963, Southwestern Public Service Company Rate Schedules F.P.C. No. 48 and F.P.C. No. 49.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CITY OF ALLEGAN, PROJECT NO. 785

ORDER FURTHER AMENDING LICENSE

(Issued June 11, 1963)

Application was filed February 20, 1963 by City of Allegan, Michigan, licensee for Project No. 785, for amendment of Article 22 of the license so as to make the new administrative annual charge formula set forth in the Commission's Order No. 205 issued June 6, 1958, in Docket No. R-129 (19 FPC 907) apply to Project No. 785.

The administrative annual charge as presently fixed under Article 22 of the license is based upon installed horsepower capacity plus annual gross energy generated by the project. Under the new administrative annual charge formula, the assessment of annual charges is based upon the actual costs of administering Part I of the Federal Power Act.

The Commission finds:

(1) The license further amended as hereinafter provided is in the public interest.

(2) The installed horsepower capacity of the project for the purpose of computing the capacity component of the annual charge is 3,350 horsepower and the annual charge for reimbursing the United States for the costs of administration of Part I of the Federal Power Act, based on such capacity, is reasonable.

The Commission orders:

(A) The license for Project No. 785 is hereby further amended, effective as of January 1, 1963, by changing Article 22 thereof to read as follows:

Article 22. The licensee shall pay to the United States the following annual charges:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part 11 of the Commission's regulations. The authorized installed capacity for such purposes is 3,350 horsepower.

(B) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, and Harold C. Woodward.

AMERICAN LOUISIANA PIPE LINE COMPANY, DOCKET NO. CP63-260

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 11, 1963)

On March 20, 1963, American Louisiana Pipe Line Company (Applicant) filed in Docket No. CP63-260 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the

construction, during the 12-month period following issuance of the proposed certificate, and the operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally co-extensive with said system.

The total cost of the proposed facilities will not exceed $2,000,000 and no single project will exceed a cost of $500,000. The application states that the proposed facilities will be financed from cash generated from operations, and that it will not be necessary to undertake any new financing for this purpose.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 4, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, American Louisiana Pipe Line Company, a Delaware corporation with its principal place of business at One Woodward Avenue, Detroit 26, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities to take natural gas purchased from producers thereof as proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit pursuant to Section 2.58 (c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization hereinafter granted, a statement showing projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization hereinafter granted, (d) location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period following the issuance of the proposed certificate, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $2,000,000 with no single project to exceed a cost of $500,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing American Louisiana Pipe Line Company to construct during the 12-month period following issuance of this certificate the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to American Louisiana Pipe Line Company.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the 12-month period following the issuance of the certificate, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $2,000,000 with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross and Harold C. Woodward.

JAKE L. HAMON, DOCKET NO. G–16747; TENNESSEE-TEXAN OIL COMPANY, DOCKET NO. G–16867; TIDEWATER OIL COMPANY, DOCKET NO. G–16908; SUNRAY MID-CONTINENT OIL COMPANY, DOCKET NO. G–17461; TEXACO INC., DOCKET NO. G–19018

ORDER MODIFYING ORDER ADOPTING EXAMINER'S DECISION AND DENYING PETITIONS FOR REHEARING

(Issued June 11, 1963)

Applications for rehearing of our Order issued April 22, 1963, 29 FPC 784, adopting the examiner's decision in the above proceedings have been filed by Sunray DX Oil Company, Jake L. Hamon, Texaco Inc., and

the Public Service Commission of the State of New York. The examiner's decision, which we adopted, generally provided for initial price conditions for producers' sales in Railroad District No. 4 similar to those provided in *Skelly Oil Company, et al.*, Opinion No. 362, 28 FPC 401, issued August 30, 1962, and Opinion No. 362–A, 28 FPC 1065, issued December 18, 1962. In their applications for rehearing the producers have renewed the arguments made in their exceptions with regard to admissibility of evidence allegedly justifying a higher price and the imposition of a condition relating to take-or-pay clauses. New York has limited its application for rehearing to our refusal to impose refund conditions upon the producers.

The points raised in the applications for rehearing were also raised in the parties' exceptions, and were fully considered by us in adopting the examiner's decision. Except for one point with regard to our failure to limit modification of the take-or-pay clauses as noted in the application of Texaco, we find that the applications for rehearing present no facts or principles of law which would warrant any change in our Order.

The Commission orders:

(A) The applications for rehearing of our Order issued April 22, 1963, in the above-entitled proceedings are hereby denied, except as specified in ordering paragraph (B).

(B) Ordering paragraph (C) of the examiner's decision issued October 15, 1962, and adopted by our Order issued April 22, 1963, in these proceedings is hereby modified to add the words "provided, however, the producers shall not be required to file take-or-pay provisions for less than 80% of the annual contract quantities."

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, and Harold C. Woodward.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP60–60

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 11, 1963)

On September 25, 1962, Panhandle Eastern Pipe Line Company (Applicant), filed in Docket No. CP60–60 an application to amend the Commission's order, issued July 27, 1962, 28 FPC 211, to authorize the modification of facilities and to delete authorization for other facilities, all west of Liberal, Kansas, and all in Applicant's gas supply areas in the Panhandle-Hugoton area, all as more fully set forth in the application to amend.

Specifically, Applicant requests the subject order be amended as follows:

(A) To delete authorization for the 17.8 miles of 26-inch loop between Applicant's Liberal and Hansford compressor stations;

(B) To authorize turbocharging of the compressor engines at Applicant's Guymon compressor station;

(C) To authorize the installation in Applicant's Satanta compressor station of three 800 horsepower engines heretofore located in the Hansford compressor station, and,

(D) To authorize the installation in Applicant's Elkhart compressor station of one 1,100 horsepower engine heretofore located in the Sunray compressor station.

Applicant states that the proposed revisions in its west end facilities are designed more nearly to fit current gas supply conditions. Applicant states further that somewhat larger volumes of gas than heretofore contemplated will be available to Applicant from its sources of supply in the Kansas portion of the Panhandle-Hugoton area, and, accordingly, volumes of gas larger than previously estimated will be received at the Elkhart and Satanta compressor stations. Offsetting these increases, volumes correspondingly smaller than previously estimated will be received at Applicant's Sunray and Hansford compressor stations.

Applicant states that as a result of the subject proposals, the total estimated cost of facilities in Docket No. CP60–60 will be reduced by $821,000.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on April 27, 1963 (28 F.R. 4214). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued July 27, 1962, in Docket No. CP60–60 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued July 27, 1962, in Docket No. CP60–60 be and the same is hereby amended to authorize the modifications of facilities and to delete authorization for certain other facilities, such facilities heretofore authorized by the subject order, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, and Harold C. Woodward.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP63–248

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND OF PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued June 11, 1963)

On March 4, 1963, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP63–248 an application pursuant to Sections 7 (c) and (b) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas pipeline facilities to replace a portion of its Clawson and Richmond lateral pipelines.

Applicant proposes to construct approximately 13.8 miles of 16-inch pipeline which will replace its existing 12-inch line now serving Michigan Gas Storage Company, and known as the Clawson lateral, located in Oakland County, Michigan. The pipe will be used to replace applicant's facility known as the Richmond lateral which extends for approximately 11.9 miles along the Indiana-Ohio border and serving natural gas to the City of Richmond, Indiana, all as more fully described in the application.

The inlet pressure to the Clawson lateral (and hence the capacity of the lateral) is not governed by Panhandle but rather is dependent upon the pres-

sure to which the gas in the north is compressed by Michigan Gas Storage Company in its Freedom Compressor Station. During the period of the year in which Michigan Gas Storage Company limits the delivery pressure of the gas into the north line, so as to accommodate its receipt of large deliveries of gas from its storage fields, Panhandle's capacity to deliver gas from the Clawson lateral is correspondingly reduced.

In order to remedy this condition, Panhandle proposes to bolster its Clawson lateral by replacing approximately 13.8 miles of existing 12-inch line with 16-inch line.

As to the Richmond lateral, its corroded and leaking conditions cause substantial loss of gas. It also impedes improvement of gas service to the City of Richmond, Indiana. It is to be replaced by the salvaged 12-inch pipe to be taken from the Clawson lateral. The old pipe-line consisting of 10-inch and 8-inch sizes is of no commercial value as salvage and is to be abandoned in place.

The estimated total cost of the proposed projects is $1,055,000 which will be financed from funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 3, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene have been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted pursuant to Section 1.30(c) (1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware Corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) The facilities hereinbefore described, as more fully described in the application are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The facilities proposed to be abandoned, as hereinbefore described, are subject to the jurisdiction of the Commission, and the abandonment by the Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(6) The proposed abandonment of facilities by Applicant is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Panhandle Eastern Pipeline Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(C) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, be and the same are hereby granted.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, and Harold C. Woodward.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP63-257

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 11, 1963)

On March 15, 1963, as supplemented on March 25, 1963, Texas Eastern Transmission Corporation (Applicant) filed in Docket No. CP63-257 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the additional sale and delivery to The Manufacturers Light and Heat Company (Manufacturers) and The Ohio Fuel Gas Company (Ohio Fuel), jointly, of up to 10,200 Mfc* of natural gas per day under Applicant's FPC Gas Rate Schedule DCQ-C and a total volume of 4,365,600 Mcf* under Applicant's FPC Gas Rate Schedule ACQ-C, all during the period April 1, 1963, through December 31, 1963, all as more fully set forth in the application, as supplemented.

Applicant states that, because of the severity of the past winter, Manufacturers and Ohio Fuel withdrew from storage substantially more gas than scheduled, resulting in storage deficiencies in excess of normal inputs during the coming storage injection season. Therefore, the application indicates that the proposed additional sales and deliveries are required in order to make up this deficiency period to the 1963-64 winter.

No new facilities will be required for the proposed sales.

By letter, dated April 5, 1963, Applicant was granted a temporary certificate authorizing the proposed service.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 4, 1963, respecting the matters involved in and the issues presented by the application, as supplemented, herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

*@ 14.73 psia.

The Commission finds:

(1) Applicant, Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 10, 1947, in Docket No. G–880 (6 FPC 148).

(2) The subject transportation and sales of natural gas by Applicant hereinbefore described, as more fully described in the application, as supplemented in this proceeding, will be in interstate commerce, subject to the jurisdiction of the Commission, and such proposed transportation and sales are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The subject transportation and sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Texas Eastern Transmission Corporation, to transport and sell natural gas as hereinbefore described, all as more fully described in the application, as supplemented, herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, and Harold C. Woodward.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP63–252

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 11, 1963)

On March 11, 1963, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP63–252 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of field facilities to enable it to take into its main pipeline system natural gas which it will purchase from producers thereof during the period from May 30, 1963 to May 30, 1964.

The purpose of this "budget-type" application is to enable Applicant to act with reasonable dispatch in securing by contract and connecting to its pipeline system new supplies of natural gas in various producing area generally coextensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $3,000,000 and no single project to exceed a cost of $500,000, all to be financed from current working funds.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 4, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition in opposition to intervene have been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted pursuant to Section 1.30(c) (1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Texas Gas Transmission Corporation, is a natural gas company within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of March 30, 1949 in Docket No. G–839 (8 FPC 228).

(2) The facilities hereinbefore described as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of facilities to take natural gas purchased from producers thereof as proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of the Commissions Regulations under the Natural Gas Act (18 CFR 157.20).

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization hereinafter granted, a statement showing by projects: (a) names of fields connected, (b) estimated of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization hereinafter granted, (d) location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(7) The authorization hereinafter granted should be limited to construction during the period from May 30, 1963 to May 30, 1964, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $3,000,000 with no single project to exceed a cost of $500,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Texas Gas Transmission Corporation to construct during the 12 months from May 30, 1963 to May 30, 1964 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Texas Gas Transmission Corporation.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations (18 CFR 157.20).

(C) Applicant shall submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate application.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the period designated and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $3,000,000 with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, and Harold C. Woodward.

TRANSWESTERN PIPELINE COMPANY, DOCKET NOS. G–20464, CP60–49, CP60–50, CP61–63, CP61–168, CP61–243, CP62–160, CP63–16; TRANS-CITIES PIPELINE COMPANY, DOCKET NO. CP63–15; CITIES SERVICE GAS COMPANY, DOCKET NO. CP63–17; TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP63–204.

ORDER DENYING MOTIONS FOR CONSOLIDATION

(Issued June 11, 1963)

Motions to consolidate the above-captioned proceedings with the pending matter in *Transwestern Pipeline Company*, Docket No. CP63–204, were filed by the City of Springfield, Missouri, and the Board of Public Utilities of Springfield, Missouri, jointly; The Municipal Group for Opposing Increase in Natural Gas

Rates,* both on April 9, 1963; and by El Paso Natural Gas Company (hereinafter referred to collectively as Movants) on April 24, 1963. Answers in opposition to consolidation were filed by Transwestern Pipeline Company (Transwestern), Cities Service Gas Company and the Pacific Lighting Companies (Pacific Lighting Gas Supply Company, Southern California Gas Company and Southern Counties Gas Company of California).

Movants maintain that Docket No. CP63-204 should be consolidated with the proceedings in Docket No. G-20464, *et al.*, because:

(1) The prices provided in the December 11, 1962, contract between Transwestern and the Pacific Lighting Gas Supply Company in Docket No. CP63-204 are conditioned upon the approval of the Trans-Cities project (Docket Nos. CP63-15, CP63-16 and CP63-17);

(2) The gas reserves and the availability studies presented by Transwestern in the hearing in Docket No. G-20464, *et al.*, are not realistic since they do not consider the sales contemplated in Docket No. CP63-204;

(3) Transwestern's lateral facilities must be utilized in a manner different from that proposed if Docket No. CP63-204 is certificated and, consequently, the flow diagrams (Exhibit 17) presented are not realistic;

(4) Transwestern cannot finance both projects; and

(5) The rate of return and allocation factors will be affected by the proposed sales and costs in Docket No. CP63-204.

The parties in opposition to consolidation contend in substance that the prices in the December 11, 1962, contract between Transwestern and its California customer do depend upon the certification of the Trans-Cities project, but the Trans-Cities project itself is not dependent upon the approval of that contract or the prices set out therein. Second, Transwestern in these proceedings is seeking authorization for the Trans-Cities project. If it can show sufficient gas reserves and availability to serve those commitments and the ability to finance that project, there is no need to go further and determine that Transwestern might not be able to serve and finance the project contemplated in Docket No. CP63-204. These matters relate to Transwestern's ability to render the service proposed in Docket No. CP63-204 rather than that proposed in the Trans-Cities project. Third, although Transwestern's lateral facilities may be utilized in a different manner as a result of subsequent new sales, Movants do not set out clearly why this would of itself require consolidation. If the flow diagrams are so defective as to indicate that Transwestern will be unable to render the proposed service in these proceedings, then it could be argued that the project should not be certificated. Fourth, the additional sales and costs contemplated in Docket No. CP63-204 may indeed have an effect upon the Trans-Cities project, but consolidation is not required to determine that impact. Transwestern has stipulated (Tr. 2176, 2177) that in considering cost allocation methods it could be assumed that Docket No. CP63-204 had been certificated authorizing the requested facilities and sales. In view of this Movants should be able to evaluate whatever effect Docket No. CP63-204 might have and be free to make whatever argument they should deem necessary in this regard. In addition, if Movants determine that the certification of the greater volumes of sales by Transwestern to its

*Consisting of the Kansas Cities of Altamont, Atchison, Beloit, Chanute, Cherryvale, Countryside, Downs, Erie, Fairway, Girard, Grenola, Howard, Iola, Kansas City, Leawood, Lenexa, Melvern, Meriden, Mission Woods, Neodesha, Osage City, Perry, Pittsburg, Prairie Village, and Topeka; and the Missouri Cities of Aurora, Carl Junction, Carrollton, Carthage, Clinton, Independence, Joplin, Kansas City, Marshall, Monett, Mt. Vernon, Neosho, Nevada, Oronago, Pierce City, Platte City, Springfield, St. Joseph, Waverly, Webb City, Warrensburg and the City Utilities of Springfield, Missouri.

California customer proposed in Docket No. CP63-204 would reduce the allocated costs to the Trans-Cities project, they could also request that any certificate issued herein be conditioned to require the filing of a lower rate to Trans-Cities.

Although the applications are to some degree interrelated and the additional sales to the California customer proposed in Docket No. CP63-204, may possibly have some effect upon Transwestern's system-wide operations, costs and revenues, we are reluctant to embroil the hearing on the Midwestern market with the many problems of the complicated California market and, consequently, are not willing at this stage of the proceedings to grant the motions for consolidation. However, the record in the proceedings in Docket No. G-20464, *et al.*, in order to be comprehensive, should thoroughly explore Transwestern's proposed California sale so that whatever impact, if any, it may have on the Trans-Cities project can be determined.

The Commission orders:

For the reasons set forth above, the motions to consolidate filed by the City of Springfield, the Board of Public Utilities of Springfield, The Municipal Group for Opposing Increase in Natural Gas Rates and El Paso Natural Gas Company are hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NOS. G-18337 AND G-18538

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 12, 1963)

On April 20, 1959, and May 18, 1959, El Paso Natural Gas Company (Applicant) filed in Docket Nos. G-18337 and G-18538 respectively, applications pursuant to Section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing the construction and operation of certain natural gas transmission facilities enabling the direct sale and delivery of additional quantities of natural gas to Arizona Public Service Company (Public Service) and El Paso Electric Company (El Paso Electric), all as more fully represented in the applications in these proceedings.

Applicant in Docket No. G-18337 proposes to (1) construct and place in operation a 16" O.D. 25-w.t. pipeline approximately 14.1 miles in length extending from a point of connection with its existing pipeline facilities in the Phoenix, Arizona area of Maricopa County, Arizona to a point of termination adjacent to Public Service's Ocotillo Power Plant located in the same County; (2) construct and operate a sales meter station located at the terminus of the proposed new pipeline facility; and (3) construct and operate those communication facilities necessary and incident to the operation and maintenance of the above-described facilities sought in this Docket. These facilities will be for the purpose of enabling Applicant to deliver and sell quantities of natural gas to Public Service for use as fuel in that company's Ocotillo Power Plant located near Phoenix, Arizona.

Applicant in Docket No. G-18538 proposes to (1) construct and operate approximately 0.50 miles of 10¾" O.D. pipeline extending from a point of connection with its existing California main line gas transmission system located

in El Paso County, Texas, to El Paso Electric's Newman Power Plant located in the same County; (2) construct and operate a sales meter station located at the terminus of the proposed new pipeline facility; and (3) construct and operate those communication facilities necessary and incident to the operation and maintenance of the above-described facilities sought in this Docket. These facilities will be for the purpose of enabling Applicant to deliver and sell quantities of natural gas to El Paso Electric for use as fuel in the latter company's Newman Power Plant located near El Paso, Texas.

The estimated costs, including overhead and contingency funds for the proposed facilities in Docket No. G–18337 is $865,000. The estimated costs, including overhead and contingency funds for the proposed facilities in Docket No. G–18538 is $45,000. These estimated costs for both Dockets will be financed from current working funds or by short-term bank loans.

Applicant estimated in its respective applications that the proposed facilities would enable the transportation and delivery of a net increase of 12,300,000 Mcf of natural gas with respect to Docket No. G–18337, and a net increase of 2,500,000 Mcf of natural gas with respect to Docket No. G–18538, over the 1959 annual purchased volumes.

Pursuant to due notice, a public hearing was held in Washington, D.C., on May 31, 1963, respecting the matters involved in and the issues presented by the applications herein. No petition to intervene or protest to the granting of the applications have been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation with its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the applications in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

(6) The facilities authorized in Docket No. G–18337 should not be used to transport in excess of an annual net increase of 12,300,000 Mcf of natural gas over the 1959 annual volumes transported and delivered by Applicant to Arizona Public Service Company. Likewise, the facilities authorized in Docket No. G–18538 should not be used to transport in excess of an annual net increase of 2,500,000 Mcf of natural gas over the 1959 annual volumes transported and delivered by Applicant to El Paso Electric Company.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision proceduce herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the applications in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized in Docket No. G-18337 shall not be used to transport in excess of an annual net increase of 12,300,000 Mcf of natural gas over the 1959 annual volumes transported and delivered by Applicant to Arizona Public Service Company. Likewise, the facilities authorized in Docket No. G-18538 shall not be used to transport in excess of an annual net increase of 2,500,000 Mcf of natural gas over the 1959 annual volumes transported and delivered by Applicant to El Paso Electric Company.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, and Harold C. Woodward.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP63-241

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 12, 1963)

On February 27, 1963, United Gas Pipe Line Company (Applicant) filed in Docket No. CP63-241 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction in two phases and operation of certain compressor facilities along its existing South Louisiana to North Louisiana pipeline, all as more fully set forth in the application.

Specifically, Applicant seeks authorization for the following facilities:

Phase I—1963 construction:

(a) Install one 6700 horsepower natural gas turbine driven centrifugal compressor together with appurtenant facilities, at a new compressor station, Arnaudville, St. Landry Parish, Louisiana, and,

(b) Augment the two 2800 horsepower natural gas engine driven centrifugal compressor units authorized in Docket No. CP61-151, at Marksville, Avoyelles Parish, Louisiana, by adding facilities to upgrade such units to two 3300 horsepower natural gas engine driven centrifugal compressor units. In addition, install one 3300 horsepower natural gas engine driven centrifugal compressor unit together with appurtenant facilities.

Phase II—1964 construction:

(a) Add one 6700 horsepower natural gas turbine driven centrifugal compressor complete with appurtenant facilities at the Arnaudville Station;

(b) Add one 3300 horsepower natural gas engine driven centrifugal compressor complete with appurtenant facilities at Marksville Station, and,

(c) Install one 6700 horsepower natural gas turbine driven centrifugal compressor complete with appurtenant facilities at a new compressor station, Olla, LaSalle Parish, Louisiana.

Applicant states that the estimated cost of Phase I facilities is $3,128,442 and that the estimated cost of Phase II facilities is $4,561,622. These estimated costs will be financed out of current working funds.

Applicant states that the proposed facilities will provide additional capacity required to permit Applicant to continue adequately to serve existing customer requirements in the North Louisiana and Tyler Districts, to deliver additional quantities of gas to pipeline customers and to offset decreasing supplies of natural gas available from sources presently serving these areas.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 4, 1963, respecting the matters involved in and the issues presented by the application in this proceeding. Two petitions to intervene have been filed in the subject docket by interested companies. In each case, the burden of such filings has been that the petitioners did not request formal hearing herein and did not object to the hearing and disposition of the subject application under the shortened procedure provided for by the Commission's Rules, but that each petitioner desired to preserve its rights to appear and participate fully in the event that this matter should be set for formal hearing. Inasmuch as the abridged hearing procedure is being used herein, no further action on the two intervention petitions appears necessary.

No protests to the granting of the application having been received and no other appearances having been entered at the hearing, staff counsel moved orally that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, United Gas Pipe Line Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 24 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP61-248

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 13, 1963)

On March 20, 1961, as supplemented on June 7, 1961, and later on December 13, 1961, and as amended on January 17, 1963, El Paso Natural Gas Company (Applicant) filed in Docket No. CP61-248 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline and metering facilities, and the sale and delivery of natural gas to Cascade Natural Gas Corporation (Cascade), all as more fully set forth in the amended application.

Applicant now seeks authority to sell and deliver natural gas to Cascade on both a firm and interruptible basis for resale and general distribution in and about the Olympic Peninsular Area of the State of Washington. Applicant estimates that during the five-year prospective period considered in the application, annual and maximum day natural gas requirements for the proposed project will aggregate 2,197,537 Mcf and 18,080 Mcf respectively, and that future requirements will exceed these volumes. Cascade's annual requirements are firm except for approximately 1% to 2% of interruptible institution volumes. No quantities of interruptible gas for industrial consumers are included, although Cascade anticipates such demands in the future and will render such service to the extent of availalble capacity. The sales and deliveries which are the subject of the application are proposed to be made in accordance with and at rates contained in Applicants existing applicable rate schedules of its FPC Gas Tariff, Original Volume No. 3.

Applicant proposes to construct and operate the following facilities: (1) approximately 15.9 miles of 10¾" O.D. x .188" w.t. pipeline, including two submerged river crossings, together with standard appurtenances, extending from a point of connection with its existing 10¾" O.D. Olympia Lateral located

in Thurston County, Washington, in a northwesterly direction to a point of termination in the same county; (2) approximately 12.6 miles of 8⅝" O.D. x .188" w.t. pipeline, together with standard appurtenances, extending from a point of connection with the terminus of the pipeline described in (1) above, in a northerly direction to a point of termination in the vicinity of Shelton, Mason County, Washington; (3) approximately 11.4 miles of 8⅝", O.D. x .188" w.t. pipeline, together with standard appurtenances, extending from a point of connection with the terminus of the pipeline described in (1) above, in a westerly direction to a point of termination in the vicinity of McCleary, Grays Harbor County, Washington; (4) a sales measuring and regulating station located at the terminus of the pipeline described in (2) above near Shelton, Washington; and (5) a sales measuring and regulating station located at the terminus of the pipeline described in (3) above near McCleary, Washington.

In addition to the facilities sought in the amended application, Applicant will, under authority of Section 2.55(a) of the Commission's General Policy and interpretations, construct and operate, at an estimated cost of $10,000, related communication facilities necessary for the operation and maintenance of the requested facilities.

The estimated total cost of the above described facilities, including overhead and contingency provisions is $1,668,000 to be financed out of current working funds supplemented, as necessary, by short-term bank loans. Applicant states that it may at some future date finance these facilities through the sale of bonds or other long-term securities.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 6, 1963, respecting the matters involved in and the issues presented by the application, as amended, herein. No petition to intervene or protest to the granting of the application, as amended, has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation with its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application, as amended, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities and to sell and transport natural gas as hereinbefore described, all as more fully described in the application, as amended, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within eighteen months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP63-218

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 14, 1963)

On February 1, 1963 El Paso Natural Gas Company (Applicant), filed in Docket No. CP63-218 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 12 miles of 6⅝ inch pipeline, together with necessary appurtenances, looping a segment of its Alamogordo Lateral in Dona Ana County, New Mexico, and also measuring and regulating equipment, all as more fully described in the application.

Applicant states that the Alamogordo Lateral above referred to is used for making sale and delivery of natural gas to Southern Union Gas Company (Southern Union) for sale and distribution in the communities of Alamogordo and Tularosa and for resale to United States installations at White Sands Missile Range (White Sands) and to Holloman Air Force Base (Holloman), located in Dona Ana and Otero Counties, New Mexico.

Applicant states that peak day demands upon the facilities in the said areas have exceeded the maximum designed capacity of those facilities during the past heating seasons, necessitating reinforcement and enlargement of such facilities to meet requirements.

The proposed facilities when constructed will enable Applicant to meet future requirements of Southern Union through the 1966-67 heating seasons.

By letter dated February 20, 1963, Applicant was issued a temporary certificate to construct and operate the proposed facilities, subject to conditions without prejudice to final disposition.

The estimated total cost of the proposed facilities is $211,000 to be financed out of working funds and short term bank-loans, if necessary.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 6, 1963, respecting the matters involved in the issues presented by the application herein. No protest to the granting of the application or petition to intervene in opposition thereto has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G–242 and G–257 (3 FPC 851).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within twelve months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

JACK P. RAYZOR (OPERATOR), ET AL., DOCKET NO. G-17130

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, REQUIRING REFUNDS, AND TERMINATING PROCEEDING

(Issued June 14, 1963)

On May 6, 1963, Jack P. Rayzor (Operator), *et al.* (Rayzor) submitted, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, an Offer of Settlement in the above-designated proceeding, which relates to the jurisdictional sale of natural gas by Rayzor, under its FPC Gas Rate Schedule No. 5, to Tennessee Gas Transmission Company (TGT) from the South Lucky Field, Matagorda County, Texas (Railroad Commission District No. 3). The increased rate of 16.16947¢ per Mcf at 14.65 psia, designated as Supplement No. 7 to Rayzor's FPC Gas Rate Schedule No. 5, became effective subject to refund on June 1, 1959.

Under the terms of the offer, Rayzor proposes to eliminate the favored-nation and price redetermination provisions from its rate schedule, and to establish a 15.0¢ per Mcf settlement rate at 14.65 psia, including dehydration charge and present tax reimbursement, for the remaining term of the contract.

In support of its offer, Rayzor cites the deletion of the favored-nation and price redetermination provisions from its gas purchase contract with TGT, and states that such provisions were important elements of consideration required by Rayzor under the contract for the long-term commitment of its gas reserves to the performance of the contract. TGT concurs in the offer.

Since the proposed settlement rate of 15.0¢ per Mcf at 14.65 psia is acceptable under the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61-1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264 issued March 27, 1963, 28 FPC 589 for jurisdictional sales of natural gas in Texas Railroad Commission District No. 3, it is believed that the public interest will best be served by accepting Rayzor's proposed settlement as hereinafter ordered. However, we desire to make it clear that acceptance of the Offer of Settlement shall not be construed as approval of any future increased rate proposed by Rayzor.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the Offer of Settlement filed by Rayzor with the Commission on May 6, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by Rayzor with the Commission on May 6, 1963, is hereby approved in accordance with the provisions of this order.

(B) Rayzor shall file, within 30 days from the date of issuance of this order, a notice of change providing for the 15.0¢ per Mcf rate, including dehydration charge and present tax reimbursement, specified in its offer of settlement and a contractual amendment to its FPC Gas Rate Schedule No. 5, which Rayzor shall execute with TGT in conformity with Rayzor's offer of settlement in all respects. Both the notice of change and the contractual amendment shall be submitted in

accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Within 30 days from the date of issuance of this order, Rayzor shall refund to TGT all amounts collected under its FPC Gas Rate Schedule No. 5 in Docket No. G–17130 in excess of the settlement rate of 15.0¢ per Mcf, together with simple interest at the rate of 6% per annum, from the date of receipt of such excess amounts by Rayzor to the date of refund. Rayzor shall bear all costs incidental to the making of such refunds.

(D) Within 45 days from the date of issuance of this order, Rayzor shall report to the Commission in writing the details of its calculations resulting in refunds ordered pursuant to paragraph (C) above, together with a copy of a release from TGT with respect to such refunds.

(E) Upon notification by the Secretary of the Commission that Rayzor has complied with the terms and conditions of this order, the rate and charge of 15.0¢ per Mcf at 14.65 psia, including dehydration charge and present tax reimbursement, specified in the Offer of Settlement, shall be effective as of the date of issuance of this order, the above-designated proceeding shall be deemed terminated, and Rayzor's refund obligations with respect to the above-designated proceeding shall be deemed discharged.

(F) The acceptance of this Offer of Settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending or hereafter instituted by or against Rayzor.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP63–251

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 14, 1963)

On March 11, 1963, Southern Natural Gas Company (Applicant) filed in Docket No. CP63–251 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing construction during the 12-month period from August 7, 1963 through August 6, 1964, and the operation of field facilities to enable it to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" of application is to augment Applicant's ability to act with dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas into which Applicant's system now extends.

The total cost of the proposed facilities will not exceed $3,000,000, and no single project will exceed a cost of $500,000. The costs of the proposed facilities will be financed from funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 6, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Southern Natural Gas Company, is a natural gas company within the meaning of the Natural Gas Act as found by the Commission in its order of October 6, 1942, in Docket No. G–296 (3 FPC 822).

(2) The facilities hereinbefore described as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities to take natural gas purchased from producers thereof as proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization hereinafter granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization hereinafter granted, (d) location of said project or projects, (e) the actual installed cost of said facilities subdivided by size and pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period August 7, 1963 through August 6, 1964, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Southern Natural Gas Company to construct during the 12 months from August 7, 1963 to August 6, 1964 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Southern Natural Gas Company.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general

terms and conditions set forth in paragraph (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization here granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the 12 month period August 7, 1963 through August 6, 1964 and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman, Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.; THE ATLANTIC REFINING COMPANY, DOCKET NO. CI62–146; CITIES SERVICE PRODUCTION COMPANY, DOCKET NO. CI62–135

ORDER DENYING MOTIONS FOR RECONSIDERATION OF ORDER DENYING MOTIONS FOR SEVERANCE AND CONSOLIDATION

(Issued June 14, 1963)

On May 20, 1963, The Atlantic Refining Company (Atlantic) and on May 27, 1963, Cities Service Production Company (Cities Service) filed motions[1] for reconsideration of our Order Denying Motions for Severance and Consolidation issued in these matters on April 10, 1963, 29 FPC 730.

The arguments set forth in the motions for reconsideration are substantially the same as the arguments set forth by the four CATC Companies[2] in their original motions for severance and consolidation which were denied by our April 10, 1963, order. The movants contend that a settlement agreement approved conditionally by Commission order issued December 21, 1962, requires that the initial price be determined only in Area Rate Proceeding AR61–2, *et al.*, or other similar proceeding, and that the consolidated certificate proceeding entitled Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, is not such "other similar proceeding."

Movants take issue with our interpretation of the CATC settlement agreement. They contend that we failed to recognize that, contrary to our interpretation, the temporary authorizations provided for in the agreement *are* the same as permanent certificates. Continental states (Motion pp. 5–6):

> In any event, the reason was well known *why* the CATC settlement proposal included provision for *temporary*, rather than *permanent* certificates

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[1] Both were originally filed as applications for rehearing but were rejected by the Secretary as improper under the present circumstances.

[2] Continental Oil Company and Tidewater Oil Company in addition to Atlantic and Cities Service.

as to blocks 47 and 48. Permanent certificates would, of course, have been acceptable to the applicants, but some of the interveners were reluctant to acquiesce in a *permanently* certificated price of 19.5 cents per Mcf, since some of them were then, and are now, contending elsewhere for lower prices for such sales. Under their view, it would have been inconsistent for them to agree to a permanently certificated price of 19.5 cents per Mcf. But their position would not be damaged, under their view, by our acquiescence in a temporarily certificated price of 19.5 cents per Mcf, since such price would remain in the "suspect" category and thus not usable in determining the "in-line price." [Emphasis in original.]

However, Continental and Cities Service agree with our statement in the April 10, 1963 order *supra*., that the intention of the parties must depend upon the language used and it is unnecessary, even improper, to look outside the agreement to find these intentions.

An intervener and party to the agreement, Long Island Lighting Company (Long Island) on March 11, 1963, in answer to Atlantic's motion to sever, stated that it did not agree with Atlantic's interpretation,[2] but that the agreement should be interpreted as written and that Continental's interpretation is premised on "the legally erroneous theory that private parties may, by agreement, bind the Commission to continue temporary certification and withhold permanent certification for an indefinite period of time." (Long Island Ans. p. 2)

In our order of April 10, 1963, we agreed that our approval of the settlement agreement did not so bind us. The parties to the settlement must have considered that temporary certificates can remain in existence only until such time as we act on the application for permanent certificate. The terms of the agreement from which we must derive the intention of the parties lead to this conclusion.

As we stated in our order of April 10, 1963, condition (2) of the temporary certificates issued to the CATC companies on August 29, 1961 state as follows:

(2) The above specified rate shall remain in effect until changed by Commission order in this proceeding, [Docket Nos. CI62–135, CI62–137, CI62–146 and CI62–147].

These conditions were not changed by the settlement agreement or order approving it. "[T]his proceeding" must refer to a certificate proceeding in which the proper "initial" prices must be determined. The Area Rate Proceeding Docket No. AR61–2, *et al.*, as it now exists, is primarily a proceeding to determine just and reasonable rates for the South Louisiana Area. The Union Texas Petroleum, *et al.*, proceeding is the proper proceeding for determining the issues, including the initial price issues, in the certificate applications here involved.

As we noted in our April 10 order, as previously conceived the Area Rate Proceeding, Docket No. AR61–2, *et al.*, consisted of both rate and certificate proceedings. When the certificate proceedings were severed therefrom and consolidated with Union Texas Petroleum, *et al.*, *supra*., the character of the Area Rate Proceeding changed. "Other similar proceeding" as originally devised must have referred to certificate proceedings in which proper initial rates would be determined. The "other similar proceeding" involving each of the initial sales

[2] Public Service Electric and Gas Company, another intervener and party to the settlement, filed an answer on March 22, 1963, agreeing with Tidewater Oil Company's Motion to Sever in Docket No. CI62–137 which is similar to Atlantic's motion.

here concerned *is* a certificate proceeding now consolidated in Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

The Commission finds:

No basis has been shown by Atlantic and Cities Service which justifies reconsideration or modification of our order of April 10, 1963, in these matters.

The Commission orders:

The motions for reconsideration of our order of April 10, 1963, in these proceedings Denying Motions for Severance and Consolidation filed by Atlantic on May 20, 1963, and Cities Service on May 27, 1963, are hereby denied.

Commissioner O'Connor *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MOUNTAIN FUEL SUPPLY COMPANY, DOCKET NO. CP63–258

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 17, 1963)

On March 18, 1963, Mountain Fuel Supply Company (Applicant) filed in Docket No. CP63–258 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities to increase Applicant's delivery capacity, all as more fully set forth in the application.

Specifically, Applicant seeks authorization to construct and operate:

(1) 19 miles of 24-inch pipeline from Mountain Dell to Wanship, Utah, replacing a portion of the present 16-inch pipeline;

(2) A two-unit 1,760 horsepower compressor station at Kanda Junction, Wyoming;

(3) 3.7 miles of 24-inch pipeline in Weber Canyon, Utah, replacing and relocating a portion of the present 14-inch pipeline;

(4) 10.9 miles of 20-inch pipeline to further extend the existing 20-inch loop line toward Eakin Compressor Station, Wyoming; and,

(5) 2 miles of 8⅝-inch pipeline relocating existing 8⅝-inch pipeline to accomplish the relocation of Kanda Junction 1.5 miles eastward at a more suitable point for a compressor station.

Applicant states that the proposed facilities are required to meet its increased firm peak load requirements anticipated for the 1963–64 winter season due to growth within its present service area.

Applicant estimates the cost of the proposed facilities to be approximately $4,156,000, which cost will be financed out of funds on hand and short-term bank loans as may be required.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 6, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the applicaiton has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Mountain Fuel Supply Company, a Utah corporation having its principal place of business in Salt Lake City, Utah, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 15, 1940, in Docket No. G–154 (2 FPC 288).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Mountain Fuel Supply Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 1 year from the date on which this order issues.

OPINION NO. 390

EL PASO NATURAL GAS CO., DOCKET NO. G–17849; NORTHERN NATURAL GAS CO., DOCKET NO. G–18110; THE ATLANTIC REFINING CO., DOCKET NO. G–17571; SHELL OIL COMPANY (OPERATOR), DOCKET NO. G–17888; PIONEER PRODUCTION CORP. (OPERATOR), DOCKET NO. G–18553; RIDDELL PETROLEUM CORP., DOCKET NO. G–18609; PAN AMERICAN PETROLEUM CORP. (OPERATOR), DOCKET NO. G–18660; SINCLAIR OIL & GAS CO., (OPERATOR), DOCKET NO. G–18748;

H. H. DAVIS, DOCKET NO. G–19672; THE SUPERIOR OIL CO., DOCKET NO. CI60–328; UNITED PRODUCING CO., INC., DOCKET NO. CI60–350

MEMORANDUM OPINION AND ORDER AFFIRMING IN PART AND MODIFYING IN PART EXAMINER'S DECISION AND ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 19, 1963)*

Syllabus

1. Modification of exchange agreement *allowed*; Commission *finds* proposed shift in delivery point is mutually beneficial and eliminates any rationale for continuing service charge on Beaver County deliveries. P. 1179.
2. *Reaffirming Skelly* and *Texaco Seabord, Inc.*, Commission *finds* individual company cost-type economic and financial evidence inapplicable to determination of initial price in producer certificate cases. P. 1181.
3. Evidence establishes that 17-cent price allowed in temporary authorization was upper limit in-line price for initial service in Panhandle Area of Texas and Oklahoma at time contracts were written. P. 1181.
4. Producer certificates conditioned to 17-cent area price level specified in Statement of General Policy No. 61–1. PP. 1181–1182.
5. Commission *approves* revenue-sharing arrangement which entitles producer to one-quarter of liquids in kind, or in revenues realized on sale of liquefiable hydrocarbons—regarding these payments as modified form of Btu adjustments within framework of *Michigan Wisconsin*. P. 1183.
6. Commission *strikes* contract provision guaranteeing one-cent minimum payment on processed gas since it would be tantamount to a flat allowance of 18 cents per Mcf in an area where in-line price is 17 cents per Mcf. P. 1184.
7. Take-or-pay requirement of pipeline made subject to ultimate disposition in rule-making proceeding in R–199. P. 1185.
8. Commission issues certificates of public convenience and necessity to pipelines and producers, under Section 7, of the Natural Gas Act. P. 1187.

Commissioner O'Connor *concurring* in part and *dissenting* in part.

Commissioner Woodward *joined* in Commissioner O'Connor's statement.

Allen R. Grambling, George D. Horning, Jr. and *John J. Curtin, Jr.* for El Paso Natural Gas Company.

Lawrence I. Shaw, F. Vinson Roach, Daniel B. O'Brien, Jr., Justin R. Wolf, Charles A. Case, Jr. and *Louise C. Powell* for Northern Natural Gas Company.

Oliver L. Stone and *Joseph C. Spalding* for Shell Oil Company (Operator).

W. S. Richardson for Socony Mobil Oil Company, Inc.

Charles E. McGee, Francis H. Caskin, K. B. Watson and *William Lampe* for Pioneer Production Company (Operator)

Robert F. Wright and *Joseph C. Spalding* for Riddell Petroleum Corporation

Bernard A. Foster, Jr., and *Sherman S. Poland* for Atlantic Refining Company

J. P. Hammond, John F. Jones, Clifford O. Stone, Jr., Morton Standwen and *William G. Grove* for Pan American Petroleum Corporation (Operator)

Charles E. McGee, Francis H. Caskin, Angus Davidson and *Francis H. Searle* for Sinclair Oil and Gas Company (Operator)

H. H. Davis for H. H. Davis

H. W. Varner for The Superior Oil Company

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*Opinion 390–A, issued August 14, 1963, denied rehearing and stay, 30 FPC 479. Initial decision appears on p. 1191.

H. L. Hester, Harry S. Littman and *Harold L. Talisman* for United Producing Company, Inc.

Dallstream, Schiff, Waite & Dorschel for Northwestern Public Service Company

William E. Torkelson for Wisconsin Public Service Commission

Latham Castle for the Illinois Commerce Commission

Vernon Myers for Iowa Public Service Company

Miles Lord and *Harold J. Soderberg* for the State of Minnesota

Glen H. Bell and *Harry E. Weinberg* for the City of Duluth, Minnesota

Harry D. Turner for Phillips Petroleum Company (Operator)

Tom E. Davis and *C. E. Mattingly* for Willmar Gas Company, Inc.

Glen H. Bell for Superior Water, Light & Power Company

Henry F. Reed and *Hubert C. Jones* for Iowa Power & Light Company

John A. McGrath and *Hewitt Biactt* for Chesapeake and Ohio Railway Company

John W. Scott and *Louis L. Da Pra* for Minnesota Valley Natural Gas Company

John A. McGrath and *Robert E. Lee Hall* for the National Coal Association

John A. McGrath and *Welly K. Hopkins* for United Mine Workers of America

John A. McGrath and *Charles W. Stadell* for Mid-West Coal Producers Institute, Inc.

Sherman Chickering, Bruce M. Casey and *C. Hayden Ames* for San Diego Gas & Electric Company

Richard H. Peterson, F. T. Searls and *Malcolm H. Furbush* for Pacific Gas and Electric Company

William M. Bennett, Roderick B. Cassidy and *William L. Cole* for California Public Utilities Commission and the People of the State of California

Robert W. Russell for the City of Los Angeles, California

Phillip H. Porter for Northwest Gas and Power Campany

T. J. Reynolds, Harry P. Letton, Henry F. Lippitt, II, Milford Springer, Robert M. Olsen, Jr., J. R. Elliott, John E. Holtzinger, Jr., J. David Mann, Jr. and *William W. Ross* for Southern Counties Gas Company of California and Southern California Gas Company

William I. Harkaway for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

This case, arising under Section 7 of the Natural Gas Act, involves: (1) applications by nine independent producers for certificates of public convenience and necessity for wellhead sales to El Paso Natural Gas Company (El Paso) of natural gas produced mainly in Beaver County (Panhandle area), Oklahoma;[1] (2) an application by El Paso for authority to construct and operate various facilities necessary to the acquisition, processing and delivery of up to 50,000 Mcf of natural gas per day to Northern Natural Gas Company (Northern) in substitution for a like quantity of gas which El Paso currently is authorized to deliver to Northern on an exchange basis;[2] and (3) Northern's application to construct and operate minor facilities to permit receipt of the gas from El Paso. The producers propose to sell the gas to El Paso under 20-year contracts at a

[1] Sinclair Oil and Gas Company (Sinclair), one of the producers, also seeks permanent certification for sales of gas from adjacent acreage in Ellis County, Oklahoma, and Ochiltree and Lipscomb Counties, Texas.

[2] An extension of the exchange agreement from 425,000 to 475,000 Mcf was approved by the Commission in *Northern Natural Gas Company, et al.*, Opinion No. 324, 22 FPC 164. On April 16, 1963, a temporary certificate was issued authorizing El Paso to deliver up to 50,000 Mcf per day to Northern in addition to the presently authorized daily volumes.

base initial price of 21 cents per Mcf,[3] with periodic escalations of 2 cents per Mcf each five years. The contracts also provide for price redetermination at the option of the producers after five years. The Commission previously has granted temporary certificates to El Paso and Northern to permit modification of their exchange arrangement, as requested, including construction and operation of all the facilities applied for; it has also issued temporary authorizations allowing the sales by the producer-applicants at an interim price of 17 cents per Mcf, the rate specified in the Commission's Statement of General Policy No. 61–1[4] as the maximum initial price in the Panhandle area of Oklahoma. With one exception,[5] all of the producers have accepted the temporary authorizations and are making deliveries to El Paso.

On September 4, 1962, the presiding examiner issued his decision approving in full the applications of El Paso and Northern and granting permanent certificates to the producers on condition that the proposed initial contract price of 21 cents be reduced to 17 cents per Mcf. The decision also allows a contract provision under which the producers receive one-quarter of the liquids extracted by El Paso from the gas stream, or the proceeds realized from the sale thereof, with a guaranteed minimum of one cent per Mcf of gas sold (or, in the case of Sinclair, one cent per gallon of liquid extracted) and subjects El Paso's take-or-pay-for obligations to ultimate disposition in the rule-making proceeding in Docket No. R–199. The matter is now before the Commission on exceptions to the decision filed by the California Public Utilities Commission, four of the producers (Sinclair, Shell Oil Company, The Superior Oil Company, and Pioneer Producing Corporation), and the Commission's staff.

I

As presently constituted and effective, El Paso's Rate Schedule Z–1 contains the terms and conditions of the transaction whereby Northern delivers to El Paso at the latter's Plains Compressor Station situated in Yoakum County, Texas (and at other points agreed upon) up to 475,000 Mcf of natural gas per day and El Paso delivers to Northern natural gas in equal quantities and load factor and concurrent with the deliveries by Northern to El Paso. The deliveries by El Paso are made directly to Northern at El Paso's Dumas Station in Moore County, Texas, at the interconnection between Colorado Interstate Gas Company's and Northern's existing facilities in Moore County, and to Pioneer Natural Gas Company for the account of Northern from points along El Paso's Dumas-Plains line. Under the agreement Northern pays El Paso a charge of 2 cents per Mcf on all gas exchanged.

No exception has been taken to the determination made by the examiner in regard to the applications of El Paso and Northern for modification of the exchange arrangement and the findings as made will be affirmed in all respects. Approval thereof enables El Paso to deliver to Northern, as part of the 475,000 Mcf currently authorized, the total quantity of gas El Paso now proposes to purchase up to a maximum of 50,000 Mcf per day. The major portion of this gas will be delivered to Northern at a point on the latter's pipeline in Beaver County. It consists of gas obtained by El Paso directly from the producers herein and, in addition, certain gas delivered to El Paso in Beaver County by Transwestern Pipeline Company in exchange for gas purchased by El Paso from Pioneer, Shell, H. H. Davis, United, Superior, Atlantic and Sinclair pursuant to the various purchase agreements included in their respective dockets but gathered

[3] All prices referred to herein are at 14.65 psia.
[4] 18 CFR § 2.56.
[5] H. H. Davis, Docket No. G–19672.

by Transwestern. The exchange agreement between El Paso and Transwestern is before the Commission in Docket Nos. CP61–265 and CP61–299, which have not been consolidated with this proceeding. El Paso also has pending at Docket No. CP61–92 an unconsolidated application for authorization to deliver to Northern at various points on Northern's system certain quantities of gas produced by Sinclair in Ochiltree County, Texas and secured by El Paso under the purchase contract at Docket No. G–18748. The quantities delivered in Ochiltree County also are to constitute a part of the 50,000 Mcf per day modification in the exchange arrangement. Inasmuch as only temporary certificates have been granted in Docket Nos. CP61–92 and CP61–265, and to prevent foreclosure of the issues there presented, the permanent certificates now issued to El Paso and to the above-named producers will be conditioned upon the issuance of permanent certificates in those dockets.

The pipeline companies have proposed the elimination of the 2-cents per Mcf charge on the deliveries made in Beaver County. The only opposition came from the California Public Utilities Commission on the ground that the exchange agreement is for Northern's exclusive benefit and that, without the fee, El Paso will be performing a service for Northern without compensation. The record shows that under the modified arrangement Northern will realize a potential saving of up to $1,000 per day and will save the cost of transporting the Beaver County volumes the 125-mile distance from Dumas to the new delivery point. El Paso will also profit since, by agreeing solely to forego the 2 cents per Mcf now collected, it is enabled, in effect, to obtain a volume of gas equal to the entire Beaver County purchase at its Plains Station, 325 miles nearer its market area, without transportation cost. In addition, El Paso is able to enter what is for it a new area of supply, the Anadarko Basin, without the cost of pipeline expansion. The California Commission did not continue its earlier opposition in its exceptions. We agree with the examiner that the shift in the delivery point is mutually beneficial and eliminates any rationale for continuation, on the Beaver County deliveries, of the service charge presently exacted by El Paso. The order appended hereto directs appropriate modification of El Paso's Rate Schedule Z–1 consistent with this finding and applicants' proposal.*

II

Turning now to the applications for permanent certificates filed by the producers, we conclude, for the reasons set forth in the initial decision that the public convenience and necessity requires the imposition of a price condition at the 17-cents per Mcf rate on the sales of gas to El Paso. We differ from the

*The applications submitted by El Paso and Northern for modification of the exchange arrangement and the evidence adduced with respect thereto, as well as the revisions proposed by El Paso in its tariff (exhibit No. 10), provide for elimination of the 2 cents per Mcf charge only on the Beaver County deliveries. It was not until El Paso filed the third supplement to its application on November 8, 1961, that it became clear that over 10,000 Mcf of the 50,000 Mcf per day modification, one-fifth of the total volumes involved, was to be delivered by El Paso to Northern in Ochiltree County, Texas, and not at the Beaver County delivery point. As pointed out by the examiner, this third supplement was filed a full year after the hearing had concluded and long after the final date for briefing. Whether, as it appears, the same or similar considerations apply to the elimination of the 2-cents per Mcf charge on the gas delivered in Ochiltree County as pertain to the Beaver County deliveries (and as intended by El Paso and Northern in accordance with the agreement submitted as exhibit I to the application in Docket No. CP61–92) cannot adequately be determined on the basis of the present record and, thus, must await final resolution in the latter docket. In the interim, the temporary authorization issued December 7, 1961, permits delivery of the Ochiltree County gas to Northern without its payment of the service charge.

examiner, however, by holding that the provision in the various contracts guaranteeing to the producers a minimum payment of 1-cent per Mcf of gas sold or 1-cent per gallon of plant liquids produced is not consistent with the public interest and must be stricken.

All parties agree that the only remaining issue of importance to be decided in connection with the producers' applications is the question of the initial price required for permanent certification. The producers contend that this price should be 21 cents per Mcf. They allege that the competition in the area justifies this price, that the price is comparable with that paid for nearby sales to other pipelines, and that they must obtain the 21-cent price in order to satisfy their revenue requirements. They also point out that the 21-cent price proposed to be paid by El Paso would not trigger any favored-nation clauses. Northern has not taken a position on the issue of the price to be paid the producers and El Paso requests primarily that if any price condition is to be imposed, it be in such terms as not to hinder it competitively in completing the project proposed or in its efforts to acquire additional supplies in the area. Otherwise, El Paso points out only that the reserves are adequate to make and sustain the deliveries proposed, that there is no affiliation between it and the producers, that the price was arrived at in arm's-length bargaining and was the best obtainable and that its need for additional system gas supply has been recognized by the Commission.[7] The California companies intervening in the proceeding and the staff of the Commission call for permanent certification at the level of the temporary authorization, although the California Public Utilities Commission seeks a price condition at 16 cents per Mcf. By an order dated February 26, 1960, the Commission issued temporary authorizations, conditioned to a price of 16.4 cents per Mcf, to several of the producers. After the filing of petitions for reconsideration, the temporary authorizations were amended on April 7, 1960, to provide for an interim price of 17 cents per Mcf plus applicable tax reimbursement,[8] subject to refund to El Paso of any amounts in excess of 16.4 cents per Mcf finally determined to be proper.[9]

Both staff and Southern California Gas Company[10] presented evidence in an effort to establish 17 cents as the price line. The staff exhibit, consisting of a compilation of the rates of independent producers delivering gas under temporary and permanent certificates in Beaver, Harper and Ellis Counties, Oklahoma and Lipscomb, Ochiltree and Hemphill Counties, Texas as of June 1960, showed that here were no jurisdictional sales in the period from 1957 through 1959 with a price approaching 21 cents. Of the 46 sales permanently certificated in this period at prices 16 cents and above, 30 were at 17 cents and 16 sales were between 16 and 16.9 cents per Mcf; a review of the sales temporarily authorized showed 24 out of 38 being made at 17 cents with the remaining 14 at prices ranging from 16 to 16.6 cents per Mcf. Although the exhibit did not compare the volumes involved in the various sales, testimony was adduced that certain of the sales permanently certificated at 17 cents were for reserves amounting to 285,936 Mmcf, somewhat in excess of the estimated 263,400 Mmcf in reserves acquired by El Paso in this proceeding. The Southern California Gas Company

[7] Citing orders in *El Paso Natural Gas Company*, Docket Nos. G–11797 and G–12580.

[8] The contracts provide for partial reimbursement only as to new or increased future taxes imposed on the producers.

[9] Two producers, Pan American (G–18660) and Superior (CI60–328), did not request temporary authorizations until early in 1962. The authorizations which were issued in March 1962 differ from the earlier temporary authorizations in that they provide for an interim price of 17 cents per Mcf "plus liquefiable hydrocarbon revenues" and, also, do not contain the refund floor of 16.4 cents per Mcf.

[10] In association with Southern Counties Gas Company of California.

presented a similar exhibit summarizing the initial prices in long-term producer contracts made since 1955 in the Panhandle area. Out of a total of 535 on file with the Commission as of May 31, 1960, 494 (92 percent) carried an initial price of 17 cents per Mcf or less, of which 72 contracts (13 percent) were priced at 17 cents, and 422 (79 percent) had a price less than 17 cents per Mcf. The examiner noted that the 8 percent of the contracts calling for an initial price higher than 17 cents consisted entirely of those involved in this case and the contracts providing for the sale of gas to Transwestern and which, as more fully referred to below, have now been permanently certificated at 17 cents per Mcf.

The only producer attempting to justify its proposed contract price by cost evidence was Sinclair. The evidence actually submitted by the remaining producers, whether directed to showing a prevailing price higher than 17 cents per Mcf or to the various ancillary advantages allowed in other sales in the area, is adequately treated in the initial decision and need not be reiterated at this time. Suffice it to say that the examiner's disposition of this material and of the arguments based thereon is approved. Insofar as Sinclair's presentation is concerned—specifically, its exhibits depicting the leasehold and investment costs as of March 31, 1960 with respect to its interest in both developed and undeveloped acreage dedicated by it to El Paso, its company-wide lease production costs for gas and oil for the 1958 test year, and its system-wide cost of service—we agree with the examiner that the various cases which have been decided by the Commission since the introduction of this evidence into the record in mid-1960 have the practical effect of rendering this and all such individual company cost-type economic and financial evidence inapplicable to the determination of the appropriate price line for initial service in individual certificate proceedngs. In our decision in *Skelly Oil Company, et al.*, Docket No. G–18638, *et al.*,[11] we had occasion to consider at some length a presentation of economic and financial evidence submitted by one producer in an effort to justify its proposed initial price. In unequivocally rejecting the utility of such evidence as an element for consideration in determining the price issue, we stated:

> . . . We do not think it necessary or appropriate in a certificate proceeding to consider evidence of area costs or financial requirements, or of individual company costs or financial requirements. Any such approach is of limited utility and leads to complicated long-drawn-out proceedings, detrimental to the public.

Our determination with regard to the irrelevancy of cost and cost trend information in producer certificate cases was reaffirmed in our more recent consideration accorded in *Texaco Seaboard, Inc.*, et al., Docket No. CI61–118, *et al.*[12]

The evidence establishes beyond all reasonable question that at the time these contracts were written, and therefore the date as of which their "in-lineness" is to be determined,[13] the 17-cent price allowed in the temporary authorizations, and since specified in the Statement of General Policy No. 61–1,[14] was the upper limit of the in-line price for initial service in the Panhandle area of Texas and Oklahoma. This is supported by our certification at that level of two other major producer sales in the same area, the Laverne field sales to Michigan Wisconsin Pipeline Company[15] and the Panhandle-Hugoton area wellhead sales to Transwestern Pipeline Company for which permanent certificates were issued

[11] Opinion No. 362, issued August 30, 1962, 28 FPC 401, 411.
[12] Opinion No. 383, issued March 27, 1963, 29 FPC 593.
[13] *Continental Oil Company, et al.*, 27 FPC 96, 100.
[14] 24 FPC 818.
[15] *Ashland Oil and Refining Company, et al.*, Docket No. G–12796, *et al.*, 19 FPC 1145, (1958).

July 11, 1962.[16] The *Transwestern* decision is particularly pertinent to our determination of the price question since that case involved contracts written at a time reasonably proximate to those now before us and concerned, in part, production from the same counties and in some instances the same wells,[17] and for the reason that certain of the arguments advanced by the producers here in favor of their proposed price have been nullified by that ruling. For example, the producers' allegation that no new price plateau would be established by the instant sales and that the 21-cent price is in line with and in fact below the "going market price" of 23 cents per Mcf being offered by Transwestern Pipeline Company in the Panhandle area no longer holds true in view of the 17-cent permanent price condition which has since been ordered in that proceeding. We shall, therefore, condition the certificates herein issued the producers to the 17-cent area price level.

III

Although the contracts provide for the relinquishment of processing rights by the producers,[18] El Paso is required in the normal course of operations to process the gas for the extraction of liquefiable hydrocarbons. A plant having a gas treating capacity of 40,000 Mcf per day has been constructed by El Paso in Beaver County and is now in operation. After processing, the gas is delivered to Northern at the plant tailgate under the exchange agreement. Evidence presented in the hearing indicated that the gas as delivered to El Paso would have a value of approximately 1136–1153 Btu per cubic foot at 14.74 psia and was expected to approximate 1058 Btu after processing. No Btu adjustment, either upward or downward is included in the contracts, although El Paso has the right to refuse to accept gas under 1,000 Btu. In the absence of such an adjustment, and allegedly in partial substitution thereof, the contracts provide that the producer is entitled to one-quarter of the liquids in kind or one-quarter of the revenues realized by El Paso from the sale of the liquids extracted, with a minimum payment guaranteed of one cent per Mcf on all gas delivered by it to El Paso. These payments are wholly separate from and in addition to the base price paid by El Paso for the gas itself. The gas purchase agreement between Sinclair and El Paso differs somewhat from the other contracts in that the guarantee is computed on the basis of one cent per gallon of liquids removed from the gas at the extraction plant.[19]

The examiner initially considered whether the additional payment to the producers could be allowed at all in the face of the area price policy, or whether 17 cents must be the overall price, without bonus or extra allowance for the liquefiable hydrocarbons. He concluded that inasmuch as the area price is,

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[16] *Transwestern Pipeline Company, et al.*, Docket No. G–14871, *et al.* 28 FPC 109 (order on reopened proceeding).

[17] Michigan Wisconsin also receives gas from some of the wells from which sales are being made to El Paso.

[18] Deliveries of all gas and the passage of title to El Paso occurs either at the wellhead or at the outlet of field separators, if installed.

[19] The reason for the variation in the guarantee appears to lie in the fact that, in addition to its sales in Oklahoma, Sinclair has requested a permanent certificate to sell approximately 10,000 Mcf per day of gas produced in Ochiltree and Lipscomb Counties, Texas. (Footnote 6, *supra.*) This gas, while part of the up to 50,000 Mcf per day revision in the exchange arrangement, is inserted directly into Northern's pipeline in Ochiltree County and, therefore, El Paso has no opportunity to process it at its Beaver County plant. Consequently, it would seem that no additional payment, including no payment under the guarantee, was intended for the gas produced in Texas. Delivery of this 10,000 Mcf per day to Northern in Ochiltree County also serves to explain the limitation in the size of the gasoline plant erected by El Paso to a planned capacity of 40,000 Mcf per day.

as expressly stated, the price applicable "to pipeline quality gas as that term is generally understood in each area," and since the vaporous hydrocarbons will be extracted without lowering the gas below pipeline quality, the Commission's area price policy, to his understanding, does not preclude an allowance to the producers for extra value in the gas stream over and above the pipeline quality level, provided the total payment is "within the prevailing price as required by *CATCO* and other decisions." In allowing the contractual provision to remain in effect, the examiner found that the additional payment of one-quarter of the processing revenues realized from the sale of the liquefiable hydrocarbons extracted at the gasoline plant will provide compensation to the producers for the extra value of the gas sold to El Paso to a degree reasonably comparable to the Btu adjustment and arrangement for liquid processing allowed in the Laverne Field sales to Michigan Wisconsin [20] and to the producers' retention of processing rights in the Transwestern proceeding.

The examiner also would retain the minimum guarantee on the liquids-sharing arrangement. In general, he expressed doubt whether the provision would have a marked application in the long run since it would be to the interest of El Paso to process as much of the gas as possible. Recognizing, however, that some of the gas "may have to bypass the gasoline plant and join the pipeline stream without the extraction of these enriching hydrocarbons," it was his opinion that the guarantee will save the producers harmless from the loss occasioned by El Paso's failure to process the gas and, only in this way, would the sales be comparable to the other nearby sales.

The producers contend that the surrender of the processing rights to El Paso and El Paso's retention of 75 percent of the liquids was compensated for not only by the one-quarter return on liquids and the one-cent minimum guarantee but by an increase from 17 cents to 21 cents per Mcf in the price of the gas at the wellhead. Thus, those producers excepting to the initial decision allege that the additional value of their gas has not been properly weighted by the examiner. Staff and the California Public Utilities Commission, on the other hand, argued against the minimum guarantee and have taken exception to its allowance on the ground that, since it is based on the amount of gas sold to El Paso and is to be paid irrespective of whether the gas is actually processed, it will operate to increase by that amount the initial price on sales of gas in the Panhandle areas of Texas and Oklahoma.

Within the framework of the principle set out with regard to Btu adjustments in the *Michigan Wisconsin* (Woodward area) case [21] and which in our opinion is applicable to these payments as a modified form of Btu adjustment, and foregoing for the present any redetermination as to the validity of and public necessity for compensation above the in-line price for those gaseous values which make possible the extraction of liquid products by processing operations,[22] we shall approve the revenue-sharing arrangement. It may be recalled, however, that the *net* cost of the Laverne field gas to Michigan Wisconsin (as differentiated from the approximately 18-cent price paid to those producers not participating in the processing arrangement but as to whose production Michigan Wisconsin

[20] *Michigan Wisconsin Pipe Line Company, et al.*, Docket No. G–13246, *et al.*, 19 FPC 989.
[21] *Michigan Wisconsin Pipe Line Company, et al.*, Docket No. CP61–102, *et al.*, Opinion No. 358, 27 FPC 449, 458–460.
[22] The question of whether any adjustments for increased Btu content should be allowed as a matter of general policy is presently before the Commission in the Docket No. R–200 rule-making proceeding. In accordance with our past practice we shall include a condition making the allowance of the provisions for extra compensation subject to the general policy requirements to be set forth in Docket No. R–200.

receives reimbursement from the participating producers for Btu's extracted, as well as for shrinkage and fuel used in processing) has been found previously to equate to approximately 17 cents per Mcf.[25] In conformity with our decision in that case and to maintain equality of treatment among the producers involved, we shall condition the certificates issued to these producers at 17 cents per Mcf for gas actually processed, the gas to be measured at the point of delivery and adjusted proportionately for processing shrinkage, plus the revenues actually received for the liquids extracted in accordance with the contract provisions. However, in no event shall the price paid to the producers for their gas be less than 17 cents per Mcf on the volumes sold to El Paso at the wellhead or field separator.

The evidence indicates that there is more involved in the provision for a minimum guarantee than simply a chance bypass of gas on some days or the operation of the plant on a temporary overload basis. The record reveals that El Paso will be swinging its takes to meet its diminished market requirements on weekends and may take substantially more than the 100 percent minimum contract quantity at other times in order to meet its take-or-pay-for requirement. To the extent that its takes exceed the gas treating capacity of the plant, the gas will be delivered to Northern without extraction of the liquefiable hydrocarbons and, thus, without the payment of liquid revenues to the producers. Were the guarantee to remain in effect, these producers would receive the extra compensation of one cent per Mcf for the additional Btu values in their gas sold to El Paso. Moreover, as revealed by El Paso's third supplement to its application in Docket No. G–17849, and additionally clarified by its filing in Docket No. CP61–265, 10,050 Mcf per day of the gas purchased by El Paso in Beaver County will be gathered by Transwestern Pipeline Company and injected into its line downstream of the Beaver plant. In return, Transwestern will deliver an equivalent volume of gas to El Paso at the input side of the gasoline plant. It is apparent that El Paso could have no opportunity to process the gas which is purchased by it but gathered by Transwestern and that these producers also would have to look to the minimum guarantee provision for extra compensation for additional Btu values in their gas in place of the return on liquid revenues.

Despite the above considerations, however, we believe that the one cent minimum guarantee cannot be allowed to stand. To permit it would be tantamount to a flat allowance of 18 cents per Mcf in an area in which the in-line price is no more than 17 cents per Mcf. Although we are unable for this reason to approve the guarantee, it nevertheless remains that we are compelled to provide an opportunity for an extra allowance to those producers whose gas, though produced in Beaver County, is not processed by El Paso solely by reason of an arrangement made by it with Transwestern over which the producers have no control. To do otherwise would be to subject these producers to an unjustified penalty. While the record is silent as to El Paso's handling of the liquid revenues realized from the exchange gas delivered by Transwestern, we shall require that it treat these volumes as though gathered by it into its own lines and to share with the producers the revenues realized from the processing of this gas in accordance with the contract revenue-sharing provisions. As to that gas, if any, which bypasses the extraction plant because of a unilateral election to take gas in excess of plant capacity, we shall require that El Paso include within the total liquid revenues to be apportioned among the producers an amount computed on the difference in the average Btu content of the gas received by it and that which it delivers to Northern. As previously indicated,

[25] *Transwestern Pipeline Company, et al.*, Docket No. G–14871, *et al.*, 22 FPC 391, 400.

these values have been shown as a maximum of 1153 Btu for raw gas and 1058 for processed gas, or a net decrease of 95 Btu. In accordance with the usual and accepted value ascribed per Btu in other contracts in the area, we shall permit an adjustment on this basis of 1/100 cent per Mcf for each Btu passed on, or a maximum adjustment of .95 cents per Mcf at 14.74 psia.

We are cognizant that the gas delivered to Northern at the plant tailgate is substantially in excess of the 1000 Btu's per cubic foot normally ascribed to "pipeline quality" gas. Information available to the Commission indicates, however, that the exchange gas delivered by Northern to El Paso also exceeds 1000 Btu's per cubic foot and closely approximates in heating quality the gas herein concerned. In view of the absence of information in the record regarding actual operating experience, including the quantity of gas, if any, bypassing the plant, and the fact that the *total* 50,000 Mcf per day involved in the present modification in itself constitutes only slightly more than 10 percent of the volumes included in the entire exchange between Northern and El Paso, we shall not at this time require any adjustment between the pipeline companies for Northern's receipt in Beaver County of high Btu content gas. Rather, we shall provide that El Paso maintain an annual record of the quantity and quality both of the gas not treated for extraction of the liquefiable hydrocarbons and of the residual gas delivered to Northern after processing in order that additional consideration can be given this element in a future application for modification of the exchange arrangement. In the interim El Paso and Northern are, of course, free to review the exchange arrangement and to propose any appropriate changes which may promote a more equitable exchange between the companies.

IV

One additional matter requires discussion. The staff's supplemental brief filed in May 1962 noted that in two recent cases, *Panhandle Eastern Pipe Line Co., et al.*, Docket No. CP60–103, *et al.* (Opinion No. 350, issued January 15, 1962, 27 FPC 35), and *Michigan Wisconsin Pipe Line Co., et al.*, Docket No. CP61–102, *et al.* (Opinion No. 353, issued March 7, 1962, 27 FPC 449), the certificates therein granted were conditioned so as to render the take-or-pay requirement of the pipeline subject to ultimate disposition in the rule-making proceeding in Docket No. R–199. The staff's recommendation that the present certificates be similarly conditioned, including a limitation on the maximum reduction to no less than 80 percent, was adopted by the examiner. The producers have excepted to the condition on the take-or-pay requirement, Shell in particular arguing that an inequity has been created on the basis that the producers selling to Michigan Wisconsin under the Laverne contracts from the same unit wells as it sells gas to El Paso did not have their take-or-pay-for clauses limited in the same manner. It would appear that this, as well as other arguments advanced by Shell relating to the desirability of variable delivery rates in order to obtain maximum reservoir recovery and the need for a "penalty" provision to insure that the pipeline will purchase the gas at the deliverability rates specified in the contracts, can best be treated in the rule-making proceeding and that the limitation as imposed should be affirmed.

A few words are in order with regard to the comments contained in the dissenting statements which are based on our refusal to provide a Btu adjustment similar to that approved in the *Panhandle Eastern* and *Michigan Wisconsin* cases. It should be noted that the evidence in both of the cited cases conclusively established that the jurisdictional customers of the pipeline would not be adversely affected by operation of the Btu adjustment. That this condition

was, in fact, a *sine qua non* of our acceptance of the adjustment was clearly shown in our treatment of this issue in the *Michigan Wisconsin* decision, where we stated:

> Our primary concern with the Btu adjustment is its potential impact upon the pipeline company's jurisdictional gas service. If there is no adverse impact upon Michigan Wisconsin's jurisdictional customers by reason of the operation of the proposed adjustment, and there are benefits to be realized therefrom by the producers, and pipeline, or gas consumers, then, in our opinion, the proposed adjustment may be allowed. . . .

The record in this proceeding on the other hand, does not show how the extra values remaining in the gas stream beyond the processing plant will be utilized. Moreover, El Paso will not benefit through blending of the gas or otherwise, since the gas will already have been transferred to Northern under the exchange. Yet it is the ratepayers of El Paso who would be required to pay for a component of the gas of no value to them. The limited modification of the exchange arrangement suggested in the dissent could be justified to our mind only if the entire exchange were amended to provide for a similar adjustment. We are reluctant to undertake this task on the incomplete information in the record on the relative qualities of the total amount of gas exchanged, particularly since measures have recently been undertaken to facilitate disposition of the Docket No. R–200 proceedings.[24] The minor Btu adjustment allowed with respect to the bypass gas has been included solely to forestall an inequity which could develop by a unilateral decision of El Paso.

The Commission further finds:

(1) El Paso and Northern are "natural-gas companies" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The facilities proposed by El Paso and Northern hereinabove referred to, and more fully described in their applications, will be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such facilities, together with the construction and operation thereof, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the facilities as proposed by El Paso and Northern and the change in delivery of natural gas as proposed by El Paso are required by the public convenience and necessity, and certificates should be issued to them as hereinafter ordered and conditioned.

(4) Each of the independent producer applicants, namely The Atlantic Refining Company, Shell Oil Company (Operator), Pioneer Production Corporation (Operator), Riddell Petroleum Corporation, Pan American Petroleum Corporation (Operator), Sinclair Oil & Gas Company (Operator), H. H. Davis, The Superior Oil Company, and United Producing Company, Inc. is or upon the initiation of the proposed sales to El Paso will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is or will be a "natural-gas company" within the meaning of the Natural Gas Act.

(5) The sales of natural gas proposed by each of the producer applicants, as more fully described in their applications, are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor,

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[24] *Sunray DX Oil Company, et al.*, Docket No. G–4281, *et al.*, Order Instituting Investigation and Notice of Applications to be Heard on a Consolidated Basis in Conjunction Therewith, issued May 28, 1963, 29 FPC 1079.

are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(6) El Paso, Northern, and the producer applicants are able and willing to do the acts and to perform the services proposed and to conform to the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(7) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued to Northern for the construction and operation of the facilities as proposed in its application.

(B) A certificate of public convenience and necessity is hereby issued to El Paso for the construction and operation of the facilities and the rendition of the services proposed in its application and the supplements filed thereto, subject to the conditions hereinafter set forth.

(C) The certificate issued to El Paso is subject to the issuance to El Paso of permanent certificates of public convenience and necessity upon the applications before the Commission in Docket Nos. CP61–92 and CP61–265.

(D) El Paso shall maintain an annual record of the quantity and quality of gas not treated for the extraction of liquefiable hydrocarbons, and of the quantity and quality of the residual gas delivered to Northern at the Beaver County delivery point after processing.

(E) Within 30 days from the date of issuance of this order, El Paso shall file appropriate revisions to its Rate Schedule Z-1, including the elimination, effective with the modification in the exchange agreements as authorized, of the 2-cents per Mcf charge on all deliveries of gas made to Northern at the Beaver County delivery point.

(F) Certificates of public convenience and necessity are hereby issued to The Atlantic Refining Company, Shell Oil Company (Operator), Pioneer Production Corporation (Operator), Riddell Petroleum Corporation, Pan American Petroleum Corporation (Operator), Sinclair Oil & Gas Company (Operator), H. H. Davis, The Superior Oil Company, and United Producing Company, Inc. for the sale of natural gas in interstate commerce as proposed, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the applications, subject to the conditions hereinafter set forth.

(G) The certificates herein issued to the above-named producer applicants are granted upon the express condition that each shall file a rate schedule with the Commission, or amendment thereto, within 30 days from the date of issuance of this order providing for an initial price replacing the initial contract price as proposed, not in excess of 17 cents per Mcf at 14.65 psia, including reimbursement for additional taxes, for gas not processed for liquid hydrocarbon extraction, except that the rate schedule may provide for an upward adjustment not to exceed .95 cents per Mcf at 14.74 psia for gas not processed because of El Paso's unilateral election to take quantities in excess of the capacity of its processing plant. For gas actually processed for liquid hydrocarbon removal, the price shall be 17 cents per Mcf at 14.65 psia, including reimbursement for additional taxes, measured at the point of delivery and adjusted proportionately for processing shrinkage, plus revenues actually received from liquefied hydrocarbons in accordance with the contract revenue-sharing provisions. In no event shall the price paid to the producers for their gas be less than 17 cents per Mcf on the volumes sold to El Paso at the wellhead or field separator. Any

changes or modifications to be made in accordance with this paragraph in the amounts paid the producers shall be effective only prospectively from the date of this decision.

(H) The certificates herein issued the producer applicants are granted upon the express condition that the allowance of the take-or-pay provisions and the provisions for the sharing of liquid revenues and Btu adjustment for gas delivered to El Paso in Beaver County but not processed are subject to our ultimate disposition with respect to such provisions in the rule-making proceedings in Docket Nos. R–199 and R–200, respectively; provided, however, that no modification in the terms and conditions of the rate schedules shall be made which would permit a Btu price adjustment more favorable to the producers than the adjustment provided in paragraph (G). Upon the establishment, by amendment to the Statement of General Policy No. 61–1 or by regulation, of a general policy governing such provisions in producer contracts, the producers to whom certificates are issued herein shall file within 30 days amended rate schedules in conformity therewith and with this paragraph. The producer shall not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantities.

(I) The certificates herein issued to Pioneer Production Corporation (Operator), Shell Oil Company (Operator), H. H. Davis, United Producing Company, Inc., The Superior Oil Company, The Atlantic Refining Company, and to the Sinclair Oil & Gas Company (Operator) are subject to the issuance to El Paso and Transwestern Pipeline Company of permanent certificates of public convenience and necessity upon the applications before the Commission in Docket Nos. CP61–265 and CP61–299. In addition, the certifcate issued to Sinclair Oil & Gas Company, insofar as such certificate concerns the sale of gas produced in Ochiltree and Lipscomb Counties, is subject to the issuance of a permanent certificate of public convenience upon the application before the Commission in Docket No. CP61–92.

(J) The certificates issued to the producer applicants are not transferable and shall be effective only so long as each of the applicants continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act, and the applicable rules, regulations and orders of the Commission.

(K) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Regulations thereunder. Such grant is without prejudice to any findings or orders which may have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants. Further, the action in this proceeding shall not foreclose or prejudice any further proceedings or objection relating to the operation of any price or related provision in the gas purchase contracts herein involved.

(L) Except as herein granted, the exceptions to the examiner's decision are hereby denied.

(M) To the extent not inconsistent herewith, the decision of the examiner is hereby affirmed.

O'CONNOR, *Commissioner, concurring in part* and *dissenting in part.*

While I join in the majority's disposition of most issues in this case, I cannot concur in Part III of the opinion which concerns payment to the producers for liquefiable hydrocarbons in the area.

The producers here are selling gas from the Panhandle area of Oklahoma.[1] Because of unitization of the gas fields and the close proximity of field laterals of several pipelines, a number of wells in this area are in a position to make

[1] A small amount of one producer's gas is in Texas.

deliveries to at least two pipelines—Michigan Wisconsin Pipeline Company and El Paso. At the time the contracts in question were negotiated, many producers in the Oklahoma Panhandle, including several involved in this case, had negotiated and executed contracts to sell gas to Michigan Wisconsin at 19.5 cents per Mcf plus an upward Btu adjustment (1/100 cent per Mcf for each Btu of heat content in excess of 1,000 Btu's per cubic foot) with a reservation by the producers of the right to process the gas to remove any part of the liquefiable hydrocarbons.

Michigan Wisconsin was still in the market for additional gas, therefore El Paso's attempt to purchase gas had to be at a price and/or terms at least equal to the Michigan Wisconsin contracts. Since El Paso planned to construct its own extraction plant, the form of its gas purchase contract necessarily was altered. The result of the negotiations was a contract wherein El Paso agreed to purchase gas at a base rate of 21 cents per Mcf, to which was added a revenue-sharing agreement granting the producers one-quarter of the liquid revenues with a minimum guarantee of 1 cent per Mcf. These contracts were executed by 11 producers. Fourteen of the wells involved also delivered gas to Michigan Wisconsin under the previously described contracts.

In March 1962 a unanimous Commission issued Opinion No. 353 granting permanent certificates to the producers selling to Michigan Wisconsin from this area under the contracts described above. The Commission found that the in-line price of gas for the Oklahoma Panhandle was 17 cents per Mcf—the price reaffirmed herein. The Commission at that time also approved the upward Btu adjustment from a base price of 17 cents for gas having a heat content in excess of 1,000 Btu's per cubic foot.[2] In justification thereof it noted that the producers would probably process the gas themselves before delivery to Michigan Wisconsin, but if that were not the case Michigan Wisconsin could remove the extra Btu's in their own extraction plant or use them for blending purposes.

The decision by the Commission was in conformity with an earlier opinion which in part involved production from the same area. In *Panhandle Eastern Pipe Line Company*, Opinion No. 350, issued January 15, 1962, 27 FPC 35, the Commission adopted a base price of 17 cents for Oklahoma Panhandle gas and approved an upward Btu adjustment.[2] The Commission noted that Panhandle Eastern planned to extract the liquefiable hydrocarbons by processing the gas through its own extraction plant but that any bypassed gas with high heat content could be used by Panhandle Eastern for blending.

Thus the Commission in two past decisions has recognized that gas with liquefiable hydrocarbons reflected by a heat content in excess of 1,000 Btu's per cubic foot has an additional or incremental value for which the producer should be equitably compensated during this interim period pending final resolution of this and related issues in the rulemaking docket R-200. The majority's opinion in the instant case purports to adhere to this principle. However, the application of it, in my opinion, is far from equitable for the producer and extremely impractical for the pipeline. In addition, it overlooks the fundamental reality that these liquefiable hydrocarbons have an economic value which the producers in some manner must fully realize because of his duty to royalty owners and state taxing authorities as well as his economic self-interest. Thus, if he is not compensated for them in the price of his gas by a pipeline which will then remove the liquids from this and other purchased gas in a large, efficient extraction

[1] A corresponding downward adjustment for gas with less than 1,000 Btu's per cubic foot was also included.

[2] See footnote 2.

plant, the producer and each similarly situated producer will be forced to install small and relatively costly extraction plants on his leases.

Application of Commission policy on this question, I submit, should be governed by three tests: protection of the consumer, equitable compensation of the producer, and nondiscriminatory treatment of the pipeline purchaser. The majority has met one test—protection of the consumer—but has given little regard for the other two. I maintain that in this case, as in the *Panhandle Eastern* and *Michigan Wisconsin* cases, the Commission can meet all three.

The producers here involved, in exchange for relinquishment of their processing rights, contracted for 1½ cents above the basic price of the Michigan Wisconsin sale plus a revenue sharing agreement granting them one-quarter of the liquid revenues with a one-cent per Mcf guarantee. The majority has eliminated the 1½ cent differential as well as the minimum guarantee in the revenue sharing agreement, leaving the producers with but a small part—a right to one-quarter of the liquid revenues—of their contractual compensation for the liquefiable hydrocarbons in their gas. I share the majority's disapproval of methods which compensate for liquefiable hydrocarbons by flat price increases and guarantees which are not tied to the actual heat content of the gas which is delivered. However, the answer is not to carve away the disagreeable parts of a unified package or method of compensation and suggest that what remains—here, the right to one-quarter of the liquid revenues—constitutes an equitable compensation. The obvious answer to me is to reject this unapproved method of compensation for liquefiable hydrocarbons in gas without prejudice to the substitution of an approved method such as the Btu adjustment unanimously approved a year ago in the *Panhandle Eastern* and *Michigan Wisconsin* cases.

This approach would eliminate the producer inequities inherent in the majority order—inequities highlighted by the fact that 14 wells from this area will be delivering identical gas sold at the same date to two pipelines but will be compensated by techniques which differ drastically in form and amount. It would also eliminate the inherent discrimination against El Paso, whose bargaining power for gas in this area will be completely undermined by the majority's action. It is indelibly clear to me that the gas producers in this market will invariably prefer to contract with Panhandle Eastern or Michigan Wisconsin where they will be assured of equitable compensation for the liquefiable hydrocarbons in their gas.

This approach is also consistent with full protection of consumer interests as in the *Panhandle Eastern* and *Michigan Wisconsin* cases. In the *Michigan Wisconsin* case it was anticipated that the producers would jointly construct and operate the processing plant and therefore the effective price of the gas to Michigan Wisconsin would be 17 cents at the outlet of the plant. However, it was recognized that the producers had no obligation to exercise the processing option in which event Michigan Wisconsin would process the gas itself, an alternative specifically approved by the Commission. Under these circumstances the Michigan Wisconsin arrangement would be substantially identical to the sale in the instant case—in both the pipeline would be paying 17 cents plus Btu's at the wellhead and would be processing the gas to remove the liquefiable hydrocarbons. The only distinction in the *Michigan Wisconsin* case is a finding that unprocessed high Btu gas could be blended with some low Btu gas also purchased by Michigan Wisconsin, whereas here there is no blending possibility for El Paso since this gas is delivered to Northern under the exchange agreement. However, only a fraction of the gas involved will be bypassed without processing, and this factor could be covered by a modification of the exchange agreement to provide that Northern compensate El Paso for these Btu's, which Northern would extract at its Bushton plant. The *Panhandle Eastern* case

is also in point from a consumer viewpoint. There Panhandle Eastern paid 17 cents plus Btu adjustment at the wellhead and planned to extract the extra Btu's at its own extraction plant, just as El Paso here plans to run its own extraction operation. Again the only difference—clearly a minor one—relates to Btu content in excess of 1,000 Btu per cubic foot which is not removed by the processing operation. In *Panhandle Eastern* it was found that the extra Btu's could be blended with lean gas purchased elsewhere; here it could be arranged that these extra Btu's could be compensated for under the exchange agreement.

In attempting to distinguish these cases, the majority overlooks the fact that in each the question of protecting the consumer under certain circumstances was deferred to the appropriate rate case. *Michigan Wisconsin*, 27 FPC 449, 458–459; *Panhandle Eastern*, 27 FPC 35, 48. A similar provision would provide the same protection here: as to bypassed Btu's El Paso could be directed to make an adjustment in its exchange agreement with Northern and cautioned that appropriate steps to insure this result would be taken in any rate case in which El Paso attempted to include in its cost of service the amounts paid for the additional Btu's.

The final point to be noted is that any policy for compensating producers for additional heat values in their gas will be an interim one, subject to adjustment in the rulemaking procedure of Docket R–200. But as we stated in January 1962 in the *Panhandle Eastern* case, "We do not wish to deprive the producers of such revenues pending our determination in Docket R–200 if they can be reasonably justified in the public interest on the record in this proceeding." (27 FPC 35, 46.) An equitable arrangement of compensation was found reasonably justified in the public interest on the record in the *Panhandle Eastern* and *Michigan Wisconsin* cases. A similar method can be found justified here, thus avoiding the inequities inherent in the solution proposed here by the majority where identical gas with identical Btu content from 14 wells sold under contracts executed at the same time will be priced at different levels depending upon the pipeline to which it flows.

INITIAL DECISION

ON THE APPLICATIONS OF TWO PIPELINES AND NINE PRODUCERS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY UNDER THE NATURAL GAS ACT

(Issued September 4, 1962)

ELLIS, *Presiding Examiner:*

Nature of the case: This is a certificate case, arising out of an application of the El Paso Natural Gas Company to acquire from nine producers a considerable quantity of natural gas in the Panhandle area of Oklahoma and, after certain processing, to deliver the gas into the main lines of Northern Natural Gas Company, all in furtherance of gas exchange arrangements which have been in force between the two pipeline companies for some time. Corresponding applications were filed by the nine producers to obtain Commission sanction of their sales under contract to El Paso. About the only question of importance in the producer applications relates to the initial price—the contracts with El Paso call for a price of 21.0¢ per Mcf, while the FPC temporary authorizations already issued to all but one producer have imposed a price condition of 17.0¢ per Mcf. The question, so far as producer's sales are concerned, is whether the permanent certificate shall include the same price condition, as recommended by the staff and certain interveners representing consumer interests.

The two pipelines, El Paso and Northern Natural, seek a certificate to cover the delivery by El Paso to Northern Natural of the gas El Paso is to buy from

the nine producers, and to authorize the relatively minor facilities needed for that purpose. Under their present exchange program, El Paso's delivery to Northern is at Dumas, in the Texas Panhandle. The new application (affecting 10% of that delivery) will change the delivery point from Dumas, Texas, to a point along Northern's line in Beaver County, Oklahoma. The quantity immediately involved is 50,000 Mcf/D, and a related issue concerns a transportation fee of 2.0¢ per Mcf which Northern has been paying to El Paso.

Procedural Background: The applications of the two pipelines and the nine producers for certificate authority to make the sale to El Paso in Beaver County, Oklahoma, and for El Paso there to transfer its purchase to Northern Natural, were filed at various dates in 1959. El Paso's (G–17849) was at one time consolidated with the expansion program of Northern Natural. When it developed that the two programs were not interdependent, the applications pertaining to the Beaver County sales were directed to be handled separately (FPC Order of April 16, 1959). During the months following, the corresponding applications from the several producers were received and there were also filed a number of motions for disposition of the case under the shortened procedure. The final applications, that of Superior Oil Company in CI60–328 and the United Producing Company in CI60–350, were filed in March 1960. In the meantime numerous petitions to intervene had been filed on behalf of the consumer interests in California, Wisconsin and elsewhere, and by certain others. The Commission's order of April 11, 1960, consolidated the various cases and called for hearing to begin on June 13; it also denied the motions for shortened procedure. A supplementary order of June 6 brought into the case the three latest filings, gave notice of El Paso's second supplement to its application, and changed the opening date of the hearing to June 27, 1960. A total of 14 amendments or supplements of the various applications have been received from time to time, some before the hearing and some later, the last one being Sinclair's seventh supplement dated June 14, 1962.

The hearings continued through 18 days during June, July, September and November, 1960 and the various briefs were filed by the parties and interveners during the early months of 1961. The entire record was then before the Presiding Examiner, Mr. Glen R. Law, for preparation of the initial decision. Late in 1961, Mr. Law suddenly and unfortunately passed away. Early in 1962, after a denial of the motion to omit the initial decision, this examiner was designated to act as Presiding Examiner in order to complete the case. It appearing that, by this time, the original applications had been filed three years before, that the hearing had been held two years before, and that the several briefs had been filed a year before, there was issued on April 26, 1962, a memorandum permitting (but not requesting or requiring) the filing of supplemental briefs limited to the issue as to a price condition on the certification of the sales by producers. Two supplemental briefs or memoranda were received.

The Pipeline Applications: For an understanding of what is sought in the applications of El Paso and Northern Natural, it is necessary to review briefly the transportation or exchange arrangement previously in effect between the two pipelines. El Paso, whose principal line runs from west Texas to California, has a two hundred mile connecting line between its principal station at Plains, in west Texas and its Dumas station in northern Texas, that is in the Texas Panhandle, the capacity of which is reported as 206,000 Mcf/D (22 FPC 164, 170). Northern Natural's line rises principally in the Panhandle area of Texas and runs north and east to Minnesota. Some years ago it developed that Northern Natural and its subsidiary (Permian) had certain supplies of gas available in the west Texas area, near Plains, far below the origin of its line in northern Texas. In a decision of the Commission dated May 1, 1953

(12 FPC 85), an arrangement was approved for Northern Natural and Permian to deliver to El Paso at its west Texas station ("Plains") up to 300,000 Mcf of natural gas per day and for El Paso to deliver a like quantity at the north end of its connecting line, near the point of origin of Northern Natural's line in the Texas Panhandle area, at Dumas. For this service El Paso was aunthorized to charge Northern 2¢ per Mcf.

It is important to note the origin of this 2¢ charge paid to El Paso by Permian-Northern Natural, since the pipelines, in their present application pertaining to a small part of the total volume being exchanged, propose to drop entirely the 2¢ charge on that part. The consequent reduction in El Paso's revenues is strongly protested by the California interveners representing the principal consumers of El Paso's line,[1] who assert that the reason for the charge was not to pay for transportation, but was to off-set a certain amount of variability in the daily quantity, claimed to be the option of Northern Natural. Turning therefore to the record, as explained at page 98 of 12 FPC, the 2¢ rate proposed by El Paso to be assessed against Permian-Northern Natural was regarded as not unreasonable since it would cost Permian somewhat more than that to construct and operate their own facilities to transport "equivalent volumes" of gas from west Texas to north Texas. Also, the 2¢ figure was felt to be compensable to El Paso "for the service proposed to be rendered." From the description of the project at page 88, it appears to have been in contemplation that El Paso would receive 300,000 Mcf per day from Permian and "transport and deliver through an existing 24-inch line equivalent volumes to Northern at the discharge side of El Paso's existing Dumas compressor station in Moore County, Texas." From this it can be taken that the 2¢ charge was looked upon as a transportation charge for carrying (in net effect) Northern Natural's gas from west Texas to north Texas.

On the other hand, the same decision was quite careful not to require that El Paso's delivery at Dumas be of the identical gas it received at the other end of its cross-state connecting line, but merely that El Paso should deliver to Northern "equivalent volumes" to that which it received, while at page 98 it is said that "El Paso has available to it a sufficient supply of gas to enable it to make the proposed deliveries to Northern at Dumas, such supply being derived from sources already attached to El Paso's existing transmission system," suggesting that the transaction approved was perhaps in part a transportation of gas for the account of Northern Natural and in part a virtual exchange arrangement under which El Paso's gas at Dumas would be traded to, or exchanged with, Northern Natural for Permian-Northern's gas at Plains. Nevertheless, it is in the paragraph immediately following on page 98 that the charge of 2¢ is described as "for the service to be rendered—that is, the delivery to Northern at Dumas, Texas, of volumes of gas equivalent to those delivered to it by Permian at or near Wasson, Texas."

However, when the filings now under consideration were made in 1959—by which time the quantity involved in the transportation-exchange agreement had grown to 425,000 Mcf per day[2]—El Paso filed a further application to increase that quantity from 425,000 to 475,000 Mcf per day. This filing (G–17854) was made just one day (February 17, 1959) after the application in the present case, the essence of the present application (G–17849) being to change the delivery point for a relatively minor portion of the El Paso exchange from Dumas in northern Texas to Beaver County in Oklahoma, where El Paso

[1] Computing from Exhibit 10, this will reduce El Paso's revenues in the exchange program from $9,500 per day to $8,500.

[2] A part of the increase from 300,000 Mcf to 425,000 Mcf was provided in Docket G–12135 and the remainder in Docket G–15139.

has acquired certain new supplies of gas which it proposes to assign to its Northern Natural exchange program. In other words, the application in the present case refers to the total delivery by El Paso to Northern at Dumas in the amount of 425,000 Mcf per day and proposes that, of that quantity, 25,000 Mcf [now 50,000] shall hereafter be delivered about 100 miles downstream on Northern Natural's line in Beaver County, Oklahoma. Contradicting the assurance given at page 11 of its present application filed February 16, 1959, to the effect that no other application to supplement or effectuate El Paso's proposal is to be filed with any federal or other regulatory body, on the following day El Paso filed its application in G–17854 to increase the total quantity involved in the exchange from 425,000 Mcf per day to 475,000. The second application (G–17854) was consolidated with the expansion program of Northern Natural and was the subject of the Commission's Opinion No. 324 issued July 31, 1959, 22 FPC 164. The Commission's order of 1959 increases the maximum quantity to be delivered to El Paso in west Texas, from 425,000 Mcf per day to 475,000, and directs that equivalent volumes are to be delivered by El Paso to Northern Natural at Dumas in north Texas, but no mention appears to be made of the 2¢ charge already in force, notwithstanding it is pointed out at page 170 that less than half the quantity can be transported by El Paso from Plains to Dumas and that the greater part of the deliveries by El Paso at Dumas must be made up from gas volumes available to El Paso in the Dumas-Panhandle area.

In the present application, G–17849, it is proposed to change the delivery point for a part of that service from Dumas, Texas, to Beaver County, Oklahoma, where El Paso has now acquired substantial natural gas resources. The second supplement filed in June 1960, increases the quantity involved in this transfer to 50,000 Mcf per day, from which it would result that 425,000 Mcf per day of the transportation-exchange arrangement would continue to be delivered by El Paso to Northern Natural at Dumas in northern Texas and 50,000 Mcf per day would be delivered in the Beaver County area in Oklahoma, about 100 miles "downstream" on Northern Natural's line. The controversy has arisen out of the following provision of El Paso's original application in the present case, quoting from page 6:

> In consideration of Northern accommodating Applicant in this manner, Applicant has verbally agreed with Northern that such deliveries made by Applicant from said Beaver County area supply to Northern will be made only in exchange and no transportation charge will be made for any of such gas to be delivered.

Interveners representing the California consumers of El Paso's gas bring into issue that feature of the new exchange arrangement which eliminates or cancels, with respect to that share of El Paso's delivery to Northern which is now to be made in the Beaver County, Oklahoma, area, the charge or levy or assessment of 2¢ per Mcf which Northern Natural has been paying to El Paso for the gas received at Dumas in northern Texas, whether in exchange or otherwise. The amount comes to $1,000 per day.

The brief on behalf of the State of California and its public utility commission refers to Northern's payment of 2¢ to El Paso for each Mcf delivered by El Paso in northern Texas at Dumas and objects to the elimination of that fee or collection or charge with respect to the 50,000 Mcf per day whose delivery point is to be changed from Dumas, Texas, to Beaver County, Oklahoma. The California interveners point out that the fee by whatever name cannot be merely a rental or transportation charge because it was originally, and still is, applied to a great deal more gas than the quantity which can, or could be, or is transported by El Paso through its cross-state pipeline from Plains to Dumas; that since the fee is now collected as well for the gas gathered by El Paso from vari-

ous nearby sources and turned over to Northern at Dumas, there is no reason apparent for eliminating that charge incident to the change in the point of delivery, which is obviously of some slight advantage to Northern since it is to be made at a point 125 miles down its line and near its markets. It is claimed that the entire arrangement is for Northern's exclusive benefit because the quantity to be actually exchanged is determined by Northern, not by El Paso, within the ceiling or limit of 475,000 Mcf per day now permitted by the certificate. That is, the real purpose of the fee is compensation for "El Paso's making available natural gas in whatever quantities Northern desires, at the latter's sole election." This is evidently inferred from the fact that the charge now applies to all the gas delivered at Dumas, not merely for the something less than half of the total quantity which can be or might be transported by El Paso from west Texas to north Texas. No specific reference is cited in support of this rationalization of the 2¢ fee. To test that claim, the record requires to be examined. It is true, as stated, that the 1953 opinion, 12 FPC 85 at page 98, is something less than explicit where it refers to the proposed flat rate of 2¢ per Mcf for the service to be rendered and then describes the service as the delivery to Northern at Dumas of volumes equivalent to those delivered to El Paso at Plains. The amendment of the certificate at page 1406 of the same volume approves its revision to the effect that El Paso is "to transport natural gas for Northern to Dumas and to charge Northern two cents for all gas delivered by El Paso to Northern at Dumas." However, I think the understanding and purpose of the Commission at that time in sanctioning this 2¢ charge is rather plainly expressed in the actual ordering paragraph which accompanied its opinion, namely paragraph (H)(4) on page 105, which directs El Paso to file an appropriate gas tariff "to reflect the transportation charge for the transportation of natural gas as provided in its contract with Permian." Turning to that contract, which is in evidence as Exhibit 10 and is El Paso's rate schedule Z–1, the 2¢ charge is found to be provided in the following langauge of Article 10, Section 3:

> For each one thousand (1,000) cubic feet of natural gas delivered by El Paso to Northern under Section 6 of Article I, in exchange for like quantities of gas delivered by Northern to El Paso under Sections 1 through 5 of said Article I, Northern agrees to pay to El Paso, as rental for the facilities covered by this lease, the sum of two cents (2¢); provided, however, no rental charge shall be made or collected for any gas delivered by El Paso to Northern at the Beaver County Delivery Point. . . .

The lease that is referred to is evidently the previous two sections of the same article, whereby El Paso leases to Northern until the year 1988, "such present capacity in the Dumas Line . . . as may be necessary from time to time to permit El Paso to meet the delivery requirements to Northern set forth in this agreement. . . ." (Item D). It seems to be plain that the understanding of the parties and of the Commission was that the 2¢ was to be paid as a compensation for the transportation charge rendered through the line from Plains to Dumas, but it is true it is not explained why the charge was or even now should be applied to that part of El Paso's delivery to Northern Natural which exceeds the capacity and/or usage for this purpose of that cross-state pipeline—which, as noted, is 206,000 Mcf per day, or something less than half of the total delivery now involved.

At any rate, no vestige of rationale remains for the 2¢ charge on the 50,000 Mcf when its delivery point is moved 125 miles down Northern Natural's line to the point now concerned in Beaver County, Oklahoma. It is manifest that any gas purchased by El Paso from the producers whose wells are in the Beaver

County area and whose gas is turned over by El Paso to Northern Natural at Beaver County cannot at any time be the subject of a transportation service by El Paso from Plains to Dumas or elsewhere. It is a rather foreshortened view of the situation to allege that the exchange agreement is solely for Northern's benefit since, so far as the 50,000 Mcf is concerned which is here in issue, the exchange arrangement provides El Paso a market for a supply which would otherwise be quite stranded, El Paso having no pipeline connection from Beaver County to Dumas or Plains or anywhere else, and if El Paso were called upon to build a line from Beaver down to Dumas, it would simply duplicate the Northern Natural line already there and any gas sent through it would simply "backtrack," that is it would travel 125 miles southwesterly from Beaver to Dumas and then retrace its steps northeastwardly from Dumas to Beaver and beyond through the line of Northern Natural (3T467). To avoid that economic waste it is obviously to the advantage of El Paso to transfer it to Northern Natural practically at its point of origin in Beaver County, Oklahoma. The net result is a true exchange, that is, for 50,000 Mcf per day of Northern Natural's gas located in West Texas, of no use to Northern Natural at that point, and for that reason there turned over to El Paso for its western markets, there is exchanged *pro tanto* an equivalent volume of El Paso's available supply in Beaver County, Oklahoma, for which El Paso there has no use, but which of course is of considerable utility to Northern Natural to carry on to its markets in the north. As the staff points out, the exchange is mutually beneficial and it appears to be equally so. Whatever the rationale or justification for a 2¢ charge as applied to the excess of the El Paso delivery at Dumas over the amount actually transported from Plains to Dumas—if any such basis there be—there is no justification for continuing the charge for that part of the delivery which, to the advantage of El Paso, takes place in Beaver County at Northern Natural's line.

There is no evidence to support California's claim that the 2¢ is a charge for whatever option there may be available to Northern Natural to control the quantity of the daily exchange delivery, and in any event, the option, if any, does not appear substantially to have been called into play. According to Exhibit 10, the quantity which was exchanged during the first 11 months following the decision of July 31, 1959, 22 FPC 164, averaged slightly over 450,000 Mcf per day and the estimate for the year following calls for the full amount of 475,000 Mcf per day. Finally, no basis has been located in support of El Paso's claim that the Federal Power Commission has already approved the elimination of the 2¢ transportation charge for the Beaver County deliveries. (El Paso reply brief, p. 3.)

Some further claim is made by the California interveners that the Beaver County arrangement should not be effectuated, in the thought that El Paso's purchases in that area will cost more than for El Paso to buy like quantities in west Texas or elsewhere, it being averred that the Commission's publication of area rates in its Policy Statement No. 61–1 means that gas can be bought in the other areas referred to at lower prices. Aside from the obvious defect that the publication in Washington, D.C. of an area price does not necessarily create a market of gas available for sale in west Texas or elsewhere, the Commission has said, ". . . we do not see that the public convenience and necessity does not permit the low priced gas going to one customer rather than another" (22 FPC 164, 171). In any event, in view of the action taken below with respect to the price, the argument put would seem now to be irrelevant.

Accordingly, since there is no apparent basis, rationale, need, or showing of public necessity for continuation of the requirement of 2¢ as a charge or assessment against Northern Natural for the gas turned over by El Paso to Northern

Natural in Oklahoma, and since the parties to the collection have agreed to its elimination, it appears clear that the exchange as now proposed should be approved. That is, as set out in the ordering paragraph below, what is approved is (1) the transfer of the delivery point from Dumas to the Beaver County area with respect to 50,000 Mcf per day out of the total of 475,000 Mcf per day of exchange gas authorized in the 1959 decision cited above, and (2) revision of the El Paso tariff on that delivery so as to eliminate the 2¢ charge on the 50,000/d Beaver County delivery.[8]

As an incident to their program as outlined above, the El Paso and the Northern Natural applications include a request for appropriate facilities authority for the physical equipment required to gather the gas in the Beaver area, process it at a central plant, and deliver it into the lines of Northern Natural. Specifically, El Paso will operate a compressor station, a gasoline plant, a dehydration plant, a hundred miles of gathering pipeline, and the metering, communication and incidental equipment required to accomplish its program. All of the items except the gasoline plant have already been authorized by temporary certificates issued in 1960 and appear to have been constructed and to be in operation. The total estimated cost for El Paso's installations is set at $4,140,000, about a third of which is for the gasoline absorption plant. There has been raised no question with respect to the financing which, it is said, will be accomplished in connection with a major expansion project presented in another docket (G–18616). The gasoline plant and the dehydration plant are designed to operate only up to a maximum capacity of 40,000 Mcf per day, but the additional deliveries to Northern to come up to the 50,000 Mcf of daily delivery in the area, as explained above, will be accomplished by operating the facilities on a temporary overload basis and by-passing certain of the proposed facilities without processing the gas. The technical staff of the Commission has examined the program and the proposal, and their brief at page 6 recommends the authorization of the facilities requested. Accordingly, the order subjoined authorizes the El Paso facilities requested, which are identified by the listing contained on pages 9 and 10 of El Paso's original application in G–17849, as revised at pages 10 and 11 of El Paso's second supplement filed in June 1960.

Northern Natural's application in G–18110 covers, so far as facilities are concerned, only the minor items needed for an interconnection between its main line and the El Paso equipment described above. They are described as "side valves and taps" to cost less than $10,000; temporary authority was granted early in 1960, and the construction was completed and the facilities placed in operation on July 2, 1960. The order herewith completes this matter authorizing the continued operation.

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[8] This (together with the next item) disposes of the El Paso and the Northern Natural applications, but this recordation is made that there is evidence that El Paso's actual program is to be somewhat different from that applied for and hereby approved. There has been read, but not considered upon its merits, a paper document filed in the name of El Paso and entitled "Third Supplement to the Original Application." The docket number typed thereon is the present file, G–17849, and the paper writing in 7 pages bears a stamp showing its receipt in November 1961 which, of course, was a year after the hearing concluded and many months after the final date for briefing. From this paper the indication may be inferred that the new delivery point for the 50,000 Mcf per day which is transferred from the Dumas station will not, as previously suggested, be solely the new plant in Beaver County, Oklahoma, but that instead a part of it may be delivered directly into Northern's pipeline in Ochiltree County, Texas, which according to the map appears to be about half way down Northern's line from its origin at Dumas to the Beaver County connection which, according to the applications here filed was to be the delivery site for all of the 50,000 Mcf involved. The Ochiltree County portion is covered by another docket filing, No. CP61–92. Since that docket has not been incorporated in the present proceeding, or made a subject of the hearing in the present matter, this phase is not further discussed, treated, or determined in the present initial decision.

Producer Applications—General: The remaining nine applicants are the producers of natural gas who have contracted to sell their product to El Paso. Their sales, being for transmission to other states and for resale there, are in interstate commerce and subject to the jurisdiction of the Federal Power Commission; accordingly, the several sellers have filed their applications in accordance with the regulations requesting certificates to authorize their sales at the contract price, which is 21¢ per Mcf in each case. After examination by the staff and others at the hearing, no question has arisen with respect to the capacity of the sellers' reserves to make and sustain the deliveries proposed; the only really important question posed by their applications is whether the contract price of 21¢ may stand free and unconditioned.

The temporary certificates already issued in these cases included a price condition of 17¢; the area price for initial service in the Texas-Oklahoma Panhandle, as announced in connection with the statement of General Policy No. 61–1, 24 FPC 818, is 17¢ also. The several producers are unanimous in seeking certificates which will permit their sales to proceed at the full 21¢ contract price. Northern Natural appears unaffected and indicates no view on this question; El Paso, the actual buyer, refers to its demonstrated need to improve its system gas supply, cites the keen competition from pipeline buyers in the area, and asks specifically that if any price condition is to be imposed, it be in such terms as not to hinder El Paso competitively in its efforts to acquire additional supplies in the area or in the successful completion of the project here proposed. The staff briefs call flatly for a price condition of 17¢, in which the several briefs on behalf of the California consumer interests join, except that a comprehensive brief on behalf of the State of California and its P.U.C. seem to plead that El Paso (its supplier) should be kept out of the Panhandle area entirely because it is supposed to be a high priced market. Also, in any event, they request a rate condition on the new certificates at the level of 16¢. Certain other and minor questions respecting the producer certificates have developed and are discussed below.

The Price Condition Question: Without doubt much remains to be written to develop the full coloration of meaning of Section 7(e) of the Natural Gas Act, directing the Commission's certificate to issue for a proposed sale if it is found to be required "by the present or future public convenience and necessity," and authorizing the attachment of "such reasonable terms and conditions as the public convenience and necessity may require." A great deal has been written upon the subject since the *Phillips* decision in 1954, which brought within the Commission's purview the regulation of sales at the producer level; and also since the decision of the Third Circuit Court of Appeals in 1956[4] giving sanction to a price condition in a certificate case with respect to an independent producer. It is not, of course, at this stage a question of what is the "just and reasonable" price required to be determined after an inquiry under Section 4 or Section 5 of the Natural Gas Act. Rather, I take Section 7(e) of the Act, the Supreme Court's decision of 1959 in CATCO, 360 U.S. 378, the Commission's Statement of General Policy No. 61–1 (issued in September 1960, while the hearing in the present case was in progress), and the numerous decisions of the Commission since that date ending with the order of July 11, 1962, in Transwestern Pipe Line Company, G–14871, to mean that a proposed sale at or below the rate announced in the Area Rate Policy Statement No. 61–1 is *prima facie* and without more to be regarded as within the standard the statute requires

[4] *Signal Oil & Gas Co.* v. *F.P.C.*, 238 F. 2d 771, cert. den., 353 U.S. 923; and see 75 Harv. L. Rev. 549 (1962).

for the issue of a certificate. Further, that a proposed price perceptibly in excess of the area level calls for critical examination, before the final certificate issues, as to whether it is in excess of the prevailing price or, in the Supreme Court's phrase, "in line" with comparable sales in the area. If the inquiry develops no commanding justification for any such demonstrated excess, then the certificate is to issue only subject to a price condition at the area rate level. This seems to be required by the imperative language of the Policy Statement itself, which says (24 FPC at 820):

> For the present, and in the absence of compelling evidence calling for other action by us, proposed initial sales of natural gas by independent producers which include rates higher than those indicated in the appendix attached to this statement shall be denied a certificate or certificated only upon the condition that lower rates be filed, . . .

The rate there shown for initial service in the Texas-Oklahoma Panhandle area is 17¢ (which accords with the price condition attached to the temporary certificates issued in these cases).

The Commission's Policy Statement is to the effect that the rate levels announced are based upon all relevant facts, including cost information from all decided and pending cases, existing and historical price structures, etc. It seems demonstrable that this distillation of the information and expertise acquired by the Commission and its staff through the examination of thousands of filings and many other sources underlying their combined informed judgment is a safer and more reliable referent in the search for the prevailing or "in-line" price than can be adduced in a single hearing by spot evidence of particular and perhaps scattered individual circumstances and events. Nevertheless, as the statute seems to require, the Commission set for hearing the applications of the nine producers who want their 21¢ sales approved without a price condition, and in fairness the late Examiner who tried the case permitted the fullest efforts of all the parties to develop that their 21¢ price is indeed one which the public convenience and necessity require.

Accordingly, beginning with the premise that the Commission, with the aid of its accumulated expertise, its manifold record-keeping, and its field investigations and the vast literature on the subject, has articulated a 17¢ rate as the prevailing price and therefore the convenient and necessary one, at least upon a *prima facie* basis, we turn to a review of the evidence presented seriatim in the effort to dislodge that presumption.

In reviewing this evidence the uncertainties of the times are to be borne in mind. The hearing began in June 1960, a year after the Supreme Court's decision in CATCO, but prior to the numerous decisions which have supplemented or perhaps implemented that basic ruling. The hearing was mid-way in progress when there was announced on September 28, 1960, the Commission's decision in *Phillips* (Opinion No. 338), a basic ruling on producer rates, together with the Commission's Statement of General Policy No. 61–1 propounding the proposed area rates, 24 FPC 537 and 818, respectively. Since the hearing and the briefing herein, a number of decisions of the Commission have furnished some guidance to the producers as to the quantum and types of evidence which the Commission finds relevant to the issue of producer rates. However, in fairness to the parties here, it must be recognized that greater uncertainty existed at the time (and may perhaps continue) as to what types of evidence should be offered, what showing will be thought appropriate and, specifically, as to whether the area price policy is to apply to contracts made in previous years but under which the service had begun only at the time of the area policy announcement

or thereafter. In such circumstances it is hardly an answer to refer to the formal burden of proof which the statutes put upon the applicants, since the burden of furnishing proof manifestly depends upon some determination or pronouncement about that which is to be proved.

The Sinclair Cost-Basis Presentation: First off, and in the effort to cooperate with the staff's indicated desire for some form of cost picture, Sinclair has presented several cost exhibits. Those numbered 23 and 29 show the leasehold and other investment costs involving the acreage dedicated under the gas sales contract to El Paso, brought up to date as of the beginning of the hearing. What is most significant here is the information that only one-sixth of the acreage has been developed. Out of 56,000 acres, nearly 9,000 represent developed acreage on which wells have been drilled, leaving 47,000 acres totally undeveloped.[5] Thus the obvious dilemma arises that inquiry for cost evidence is a search for costs that have not been incurred, related to a record of events that have not happened. It therefore becomes, on whatever basis or theory adopted, a matter of predictions and forecasts, projections and extrapolations, necessarily in the area of judgment. It can hardly be suggested that the exposition, however, painstaking, accurate and complete up to the dates indicated can be accepted as a showing of true and entire investment in any real and definitive sense, nor do I understand it to be presented for anything more than what it is on its face. For example, in the case of the 47,000 undeveloped acres, the total leasehold investment is shown as less than a million dollars because no item whatever is entered under the heading "Intangible Well Expenditures"; whereas, in the case of the 8,878 developed acres which are shown to have cost $1.73 million, we are told that five-eighths of that investment came under the heading of "Intangible Well Expenditures." Thus, the total of two and one-half million dollars so far invested by Sinclair is only very faintly an index of the final area rate base investment if, indeed, one can ever be developed here.

Sinclair's next offering, said to be derived from the proofs submitted in a current gas production rate case (4T519), is a presentation of Sinclair's company-wide cost of service for lease production of gas and oil during the year 1958, which was the last year for which the full figures were available. None of it of course is suggested as covering the production which is the subject of the present case. First listed is the total revenue figure of $161 million, with one-seventh of the total coming from gas at the rate of 11.48¢ per Mcf and the remainder from oil at $3.02 per barrel. Next appears a breakdown of the "Total Lease Production Cost of Service," professing that to produce the above revenues of $161 million, the cost of service thereto attributable was $218 million. This cost of service is broken down to show a net cost rate of 29.46¢ per Mcf for the gas and $3.51 per barrel for the oil. The figures are further broken down according to the type of production, that is, gas well gas, oil well gas, etc.

This entire showing is severely criticized by others in the proceeding because it is for a previous period (naturally so, after all, production for El Paso is even now only beginning), because it includes a somewhat higher rate of return than the Commission subsequently allowed in the case of Phillips, because it includes a substantial figure ($34 million) as allowance for federal income tax when, it is said, the company's books show a provision for federal income taxes of only $281,600, and because of other objections which treat mainly with allocation methods employed in assigning cost to gas and to oil.

These detailed objections need not be considered in the face of the far more fundamental objection that the exhibit proves entirely too much to be credible

[5] Statistical data herein is rounded off for clarity.

or persuasive of the company's major premise, namely that the contract price of 21¢ meets the public convenience and necessity test. Upon its face, the exhibit seems to assert that the gas and oil which Sinclair freely sold in 1958 at unit prices of 11.48¢ and $3.02, respectively, in fact should be regarded as responsible for a unit cost of service amounting to 29.46¢ and $3.51. If this were so, or even nearly so, one would expect the application of Sinclair—which is not listed as an eleemosynary institution—to be a petition to abandon service under the section of the law which governs the abandonment of service by a natural gas company, upon the ground so patently established that Sinclair's gas and oil production business is an extremely costly one, an unrewarding enterprise indeed.[6] But rather than closing out this losing venture, the application here considered contemplates the investment of some millions of dollars of new money, the drilling of new wells in many thousands of proven but undeveloped acreage (4T541), and their dedication for the first time to production for sale in interstate commerce at rates which, at least since 1954, have been known to be subject to federal regulation. There need be no caviling at Sinclair's helpful and sincere effort to furnish what data it could, at a time when neither the Commission nor the courts had spelled out *what* proofs the producers have the burden of. But it leaves entirely too many *non sequituri* to accept the syllogism which this exhibit is supposed (5T734) to establish: that is, that 21¢ is proved to be a fair price for the merchandise here to be produced and sold *because* company-wide sales made voluntarily in 1958 at the average unit price of only 11.48¢, in fact averaged to cost them 29.46¢ to produce and sell. When the exhibit is so patently out of line on its face, it seems superfluous to check its details for the objections which the staff and the interveners point out.

The next exhibit, numbered 25, based upon Sinclair's system-wide 1958 cost of service (Exhibit 24), develops a variety of *unit gas costs*, depending on what method of allocation of joint costs (oil and gas) is used. Sixteen different unit gas costs result, based on four allocation methods applied to the four major components of gas production, with the results ranging quite indiscriminately from 10.03¢ per Mcf (for oil well gas resulting from a cost allocation according to what is known as the sales realization method) all the way up to 36.35¢ (for gas condensate where the production costs are allocated on the relative cost basis and exploration and development costs on a BTU basis). However, until there is first established the applicability or at least the relevance of the total figure being allocated, that is, $218 million, it hardly seems profitable to explore the bases for the four methods of allocation here developed. Also, until the methodology of cost accounting as here applied can develop greater credibility and acceptability it will not be necessary or profitable to rationalize to what extent the purported cost figures for the particular company's program throughout all its production areas can be logically transplanted to a new area being developed, such as that represented in a certificate case.[7] It may be that costs

[6] Actually the disparity is even greater. According to the testimony (4T524), the figures applicable to the El Paso sale are those for the classification known as gas condensate, for which, according to Exhibit 24, the cost of service is supposed to be 36.35¢ per Mcf, while the oil in that classification is said to cost $7.13 a barrel. From the same exhibit it is shown the same oil sold in that year (1958) for $3.14; and the same gas for 13.6¢. Sinclair now seeks a certificate for their new sale at 21¢!

[7] It may be this uncertainty as to costs is not untypical. A witness for one of the other companies testified that his company for years has been seeking in vain to learn the true cost of gas production, while another witness indicated that costs are not considered or dealt with in the course of price negotiations (5T646, 830).

truly developed would be quite helpful, indeed the best guide in that situation; here they are not credible and cannot be further considered.[8]

The Prevailing Price Line: The other contracting parties besides Sinclair, that is the eight other producers and El Paso, their buyer, do not present a case for their proposed 21¢ price based upon actual or computed costs. El Paso covers adequately in its brief the various record evidences which are quite adequate to establish the other essential facts, i.e., (a) that the producers have more than enough reserves to accomplish a delivery of 40,000 Mcf per day and perhaps later 50,000, and that the total reserves dedicated to El Paso in the Beaver County fields alone are estimated at 263.4 million Mcf, (b) that El Paso's need for the gas is manifest, indeed obvious, (c) that the program is most practical from an engineering point of view, as explained above and is economically feasible, and (d) that the gas purchase contracts were negotiated at arm's length and at the best price obtainable in the light of the desirability of the purchase from El Paso's standpoint and of the keen competition from other pipeline buyers. On the subject of price, it is El Paso's plea that no provision of its certificate, or of the certificates of its suppliers, be so restrictive as to hurt its competitive position in the further search for new supplies in the general area. So far as prevailing rates are concerned, El Paso's brief is quite clear that other production in this area which is covered by permanent certificates of convenience and necessity has uniformly been approved at a base price of 17¢ per Mcf plus certain price adjustments on the basis of BTU content (a subject which is covered below).

In the effort to establish 17¢ as the price line, a witness for an intervener, the Southern California Gas Company, examined all the contracts here on file dated after 1954, 535 in all (Exhibits 32 and 33), finding that all but eight percent were shown to have an initial base price of 17¢ per Mcf or less. He said that the only contracts in this area having initial prices above 17¢ are those involved in the present case, and those calling for the sale of gas to Transwestern which, as stated below, have now been certificated by the Commission on a permanent basis with a conditioned price of 17¢. The brief on behalf of the State of California likewise relies on the evidence of widespread sales at or below 17¢ in this area and the lack of any permanently certificated sale at a higher price. Referring to the Michigan Wisconsin purchases in the Laverne Field (which is in the next county to Beaver), California cites certain features causing it to doubt that Michigan Wisconsin is paying above 17¢, but adds that if it is, then the net effect is that the sale is not a reliable referent because it was approved by the Commission in April 1958 (*re Ashland Oil*, G–12796, April 24, 1958), a year before the Supreme Court's decision in CATCO.

The testimony of the FPC staff (and its Exhibit No. 31) is overwhelming, indeed devastating to the effect that the prevailing initial price in the five counties comprising this immediate area of Oklahoma and Texas lies between 16¢ and 17¢ and that the proposed price of 21¢ to these nine producers is four cents above any other price in the area. About 90 sales are listed, half of them to the Michigan Wisconsin Pipe Line Company. The caption on page 2 of the exhibit indicates the list contains the contracts in these counties dated 1957 and

[8] As to this approach, *cf.* 24 FPC 106 at page 107; also, the Fifth Circuits opinion in *United Gas Improvement Co.* v. *F.P.C.* (1961), 290 F. 2d 133, 138. It is no answer that, as explained (6T842), "cost" and "cost of service" are two different things. To the extent that is true the cost of service evidence is irrelevant by definition. This sort of evidence—which, if valid, would tend to demonstrate that the proposed sale is a losing venture—would require the denial of the certificate application under the rule applied in other types of certificate cases, where there must be shown economic feasibility, that is, rates which will "provide essential revenue." *Kansas Pipe Line and Gas Company*, 2 FPC 29, 55; *St. Lawrence Gas Company*, 26 FPC 265, 274.

later, with prices at 16¢ and above. With the complete lack of any proof of any gas being sold interstate from this area at an approved certificated base price above 17¢, the staff brief concludes that the area price of 17¢ was the maximum prevailing price at the time and still is, and that no producer "can point to a cubic foot of gas which moves from the Oklahoma or Texas Panhandle in interstate commerce at a price of 21¢ per Mcf."

Turning now to the producer's showing as to the prevailing price, the brief on behalf of Atlantic Refining Company, while referring to the many desirable features of the purchase from the standpoint of El Paso, otherwise contents itself with a rebuttal of the testimony. Its objection to the staff exhibit No. 31 (see above) is to point out quite correctly that the listing of other prices at the 16¢–17¢ range does not take into account numerous possibly relevant features, such as drilling depth, proximity to markets and other factors such as those which the Ninth Circuit has pointed out should be considered in a true comparison.[9] I think the answer is that the other factors are important when the comparison is with only one or two or three sales, but tend statistically to become of small importance when, as in the case of Exhibit 31, the comparison lists a total of 93 sales, each and every one of which (saving the nine here involved) shows a base price in the range of 16¢ to 17¢.

The brief on behalf of Pan American Petroleum Corporation is a most useful review of the proceeding and of the various questions. However, the only actual price relied upon for comparison is the Transwestern sale (then at the proposed rate of 23¢), whose present status (17¢) has been covered above. Otherwise, Pan American points out that the sale to its predecessor in interest was at arms length and in good faith, that the sale is an excellent one from El Paso's standpoint in meeting its need, and was cheaper and more desirable than some Gulf coast sales that were otherwise being considered.

The presentation by Pioneer Production Corporation is primarily on the basis that its officials had three markets available; that is, Transwestern, Michigan Wisconsin and El Paso; that Pioneer is already receiving from its sale of gas to Michigan Wisconsin in excess of 18.4¢ per Mcf because of the BTU adjustment above the 17¢ base price, and that in comparing El Paso's offer with those of Transwestern and Michigan Wisconsin, significance was attached to the side payment or bonus offered by El Paso to the extent of 25 percent of the proceeds from the processing plant, with a guarantee of one cent per Mcf (which is discussed below). Otherwise, Pioneer is not able to establish that the 21¢ proposed is in any sense a prevailing price.

Shell Oil Company's brief (joined in by United Producing Company) is a most helpful presentation of the program and problems of the producer in entering upon a marketing program preparatory to the development of a very large area. They refer to the market value of their product, relying upon offers in the range of 20¢ to 23¢ from other companies, and point out that they were in a position at the time of the present contract made in 1958 to sell immediately to Michigan Wisconsin by adding the acreage to a present, unconditioned, permanent certificate. In fact, it is shown that 14 of the wells now covered by the El Paso sale are also involved in the delivery to Michigan Wisconsin and that there is at this time in effect the actual result often criticized, that the identical gas flowing out of the same well and being divided between two buyers is at this time certificated by the Commission at two different rates; a flat 17¢ to El Paso and also a rate of 17¢ *plus BTU* in the case of Michigan Wisconsin. What appears to have been most significant to Shell in accepting the El Paso offer of 21¢ was this confessedly higher price to balance off the prospect of immediate de-

[9] *United Gas Improvement Company* v. *Federal Power Commission*, 283 F. 2d 817 (1960).

livery had they sold to Michigan Wisconsin. It is evident that the higher price was thought to balance off the lack of the BTU adjustment and also the giving up of the processing rights, whereas in the case of its sale to Michigan Wisconsin, Shell has retained its processing rights and erected a processing plant.[10] In general, Shell's position seems to be that a price margin is necessary here to make up to Shell the loss of other advantages which it could have by selling to Michigan Wisconsin. Thus the effect of staff's Exhibit 31, showing a prevailing price in the range of 16¢ to 17¢, is regarded as entirely discounted by the various side payments and accessory arrangements in the other sales which, it is claimed, require a compensatory advantage in the form of price in order to bring the El Paso sale into equality. Shell's evidence and Shell's brief are a most convincing showing that regulation of the base price, without reference to the incidentals, the side payments or otherwise beneficial arrangements, is likely to be inequitable and is bound to be ineffective since it is evident that a seller's choice among a number of willing and anxious buyers will be influenced by price but also by such ancillary arrangements as the BTU adjustment, the processing rights, and otherwise.

Superior Oil Company's brief, like Shell's, relies upon the many advantages of these sales to El Paso (including, for example, the indication that this gas is not geared to the production rate of oil, as in other El Paso areas, and accordingly is available to help meet the "swings" in El Paso's periodic needs and available supply). Further, Superior offers a helpful comparison of its sale to El Paso with the Laverne sales to Michigan Wisconsin and asserts the need for a higher price here to offset the several advantages of the Laverne arrangement. Reliance also is placed on the general rising trend in prices in the Panhandle area during the last five year period preceding the hearing, as well as the evident need for higher prices to encourage wider drilling and prospecting for new supplies. The same argument is then presented in reverse to the effect that a limitation on the initial price to the 17¢ level will bring on a decline in development and interstate sales. Much of this showing will doubtless be of great value to a general area rate proceeding, especially one in which there presumably will be under consideration not merely the initial price, but all the accessorial arrangements and side benefits. Superior's showing makes no pretense that it is based on actual costs or actual experience in the present production, nor is it clear that the several advantages outlined for the competitive sale to Michigan Wisconsin can come close to require that they be matched here by a four cent bonus over the prevailing area price, which is what the contract with El Paso, in net effect, calls for.

In short, the various showings seem substantially to agree that the dominant, prevailing, "in line" price in this area is 17¢ or even conceivably a little below. Also, that no permanently certificated price in the area exceeds 17¢ so far as the initial base price is concerned. The evidence is also persuasive that it is not enough to condition the base price without considering the ancillary elements also, such as BTU adjustments, processing rights, and other factors. Except for the admitted benefit here that the sellers participate in the proceeds of the processing to the extent of 25 percent, it is evident the El Paso sale does lack some attributes of its rival in the next county (where the Laverne sale is made), but the differences alleged are not judged to warrant the difference in the base price that is contended for. It is concluded accordingly that, so far as the base

[10] The comparison does seem to fail to give effect to the reservation to the sellers here of one-fourth of the net proceeds from El Paso's processing operation. It is in the reply brief that Shell makes clear that it regards its guaranteed share of the net from El Paso's processing plant as a feature helping to make the Beaver County sale comparable to the permanently certificated sale to Michigan Wisconsin at Laverne.

price is concerned, the public convenience and necessity requires a price condition at the rate of 17¢ per Mcf, which accords with the area price policy, with the temporary certificates issued in these cases, and with the prevailing or the in line price at the time and the place the contracts were made. The other part of the contract price, that is the sharing of the proceeds of the gas processing, is discussed below.

The Staff's Presentation of the Nelson Formulas: The FPC staff's review of the cases of the nine producers evidently developed the impossible dichotomy—the one producer Sinclair, as set out above, had presented cost data (or perhaps, more accurately, cost of service) showing, which proved entirely too much, whereas the other producers depended on generalities which proved entirely too little. As a policy witness, the staff presented an official of its Bureau of Rates and Gas Certificates, who testified in July and early September 1960, some weeks before the Commission's announcement of the area price policy. This witness sponsored what became known as the Nelson "rule of thumb" formula to derive a rate to be used basically for comparative purposes, to test whether contract proposed rates "signal" a price contrary to the public interest. In short, the formula begins with Sinclair's actual system-wide cost of service experience in 1958 and determines the ratio existing between Sinclair's cost of service and its farm lease investment in 1958, to be 67%, which was applied to the assumed area lease investment in Beaver County to arrive at an area cost of service; this was then divided by the expected volumes of gas to be produced from the area annually, to arrive at a revenue requirement of 12.88¢ per Mcf. (9T1315–17)[11] In developing the assumed area investment, comprised of leasehold, drilling and other costs, Mr. Nelson used industry average drilling costs in Oklahoma, relating them to depths expected in well completions. Leasehold costs were computed at 10% of drilling costs.

As might be expected, this approach finds no favor with the producers whose price is here at stake. In fact, among the nine producers there will be found at least one refutation to each element or premise or point of beginning on which the formula is based. For example, there is round objection to the use of well drilling costs developed by the industry in other parts of Oklahoma when, it is claimed, the Beaver County production in the Oklahoma Panhandle is more nearly akin to that in the adjacent areas of Texas (17T2608). Other objections are more hyperbolic, one saying that it is full of assumptions based on other assumptions, none of them proved.

I think the better answer is to accept the presentation merely for what it is, a tentative basis for the beginning of studies rather than the end result. Mr. Nelson himself suggested "that a figure which is more exact and which would have a greater general applicability be developed" (11T1687). The staff brief is candid in stating that more information is necessary before it can be perfected, and that "in time" it may be a definite aid to the Commission in its undertaking to regulate independent producers (Brief, page 13). It is obvious that neither the Commission nor the industry can be expected to wrestle with a half-Nelson. Nor, indeed, does the staff expect them to here, since its proposed order does not call for a price condition in the range suggested by the tentative formula. Accordingly, it need not be further applied in this docket; whether it is appropriate to another type of case, such as an area rate case, might be quite another matter.

The staff brief raises a further and serious question as to the acceptability in the public interest of those provisions of the contracts with the producers

[11] Thus, to illustrate by a simple example, a proposed investment of $15 expected to produce 100 Mcf per year would give you a rate of 10¢ per Mcf ($15×.67÷100=10¢).

which guarantee to the producers a certain annual revenue, that is, the so-called "take-or-pay" requirement, which conceivably could operate to raise the average cost of gas considerably where for various reasons the pipeline may not be able to take the entire amount contracted for. The question is indeed a very important one from the standpoint of producers but, as El Paso points out, there are factors of advantage either way. Again, however, the obvious objection to its consideration here is that but one pipeline buyer could here be effected, namely El Paso. It would be manifestly unfair to El Paso (and perhaps to its consumers also) to saddle its purchasing agents with a serious restriction not applicable to other pipelines, all being in the race for the same gas supplies in the same area though serving other parts of the country.

The staff's supplemental brief recently filed shows that the Commission has considered the "take-or-pay" problem in two cases at least, both issued about a year after the staff's initial brief in the present matter, and in those recent decisions the Commission, after discussing the effect of 100 percent take-or-pay provisions, has conditioned the certificates hereupon issued to subject them to the Commission's ultimate disposition in a pending rule-making proceeding in Docket R-199.[12] In the record this day being certified to the Commission (as distinguished from certain other sources cited in the staff brief), there seems to be a paucity of evidence of any immediacy to this problem so far as El Paso is concerned. Accordingly, there seems to be required no further action on this question other than to attach the same condition which the Commission has promulgated in the other recent cases cited. That is, in effect, to hold this question for determination in the rule making proceeding. The paragraph to that effect in the order below comes from the Staff's recommendation in its supplemental brief. This resolution of the question would seem to meet the major objections of Sinclair to Mr. Nelson's testimony on this subject (9T1302-1309) and to clear the way for a denial of their motion to strike it, as renewed at page 36 of Sinclair's brief.

The California Case: Witness Doran for the California Commission presented an area cost study for the gas to be produced from the reserve acreage in Beaver County dedicated to El Paso, arriving at a unit revenue requirement of 10.28 cents per Mcf (Ex. 55). In part the cost study figures were derived from Sinclair's cost of service study relating to condensate gas (Ex. 24).

Doran first developed an estimated production rate base for the Beaver County area, employing intangible well drilling costs developed from A P I Joint Survey data. To an accumulated production rate base of $3,424,610, he applied an 11% rate, arriving at $376,707 as the amount of return. This latter figure became part of an area cost of service totaling $1,320,464. Other large items in the cost of service included lease production expense of $348,146 (derived from the ratio of lease production expenses to gross farm investment in Sinclair's cost of service exhibit relating to gas condensate leases—slightly over 10%—applied to the estimated initial production rate base of $3,424,610, to arrive at estimated lease production expenses of $348,146) and exploration costs of $471,017 (developed following the modified BTU approach used in the Phillips case, Opinion No. 338).

Finally, the developed area cost of service totaling $1,320,464 was divided by the estimated annual delivery volume (producers' working interest) of 12,844,761 Mcf, to arrive at 10.28 cents per Mcf as the unit cost for producers' gas in the Beaver County area.

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[12] *Panhandle Eastern Pipe Line Company*, Opinion No. 350, January 15, 1962, 27 FPC 35; *Michigan Wisconsin Pipe Line Company*, Opinion No. 353, March 7, 1962, 27 FPC 449.

Mr. Doran's study appears to represent a conscientious approach to the perplexing problem of developing a cost for gas estimated as accurately as possible, as a basis for weighing the initial price to be allowed in this area. However, as Shell's brief points out, if the Sinclair cost of service study is to be disqualified, as suggested above, then the Nelson and Doran "rules of thumb" must fail to the extent they are based upon it. Sinclair's brief takes up the cudgel on behalf of the producers against the "rule of the California thumb," summarizing rather ungenerously that it is "based on a hodge-podge of unrelated data derived from varying and untested sources." California retorts (Brief, p. 32), "Mr. Doran, faced with the non-uniform methods of producer accounting, did the best he could in using the data submitted to compile a reasonable cost of service." The exchange of acrimony is believed to be inapt since Doran's purpose was not to propose a 10.28¢ price, but only to validate a price condition no higher than the "plateau price" (Brief, pp. 34–37). Since the plateau price of 17¢ is what is called for here, on other and wholly sufficient grounds, the point is moot. The various objections to the broad transplantations of data from one area of activity to another, and to the assumptions of constancy in certain ratios and relationships which are inherent in both the Nelson and Doran plans, may better be considered in a much broader area-type proceeding where they can be tested against a very wide number of practical applications and their accuracy, or lack of it, made manifest.

Division of the Proceeds from Processing: For these nine producers the contract price for the sale for their natural gas is not simply 21¢ per Mcf (or 17¢ as conditioned) but it includes, in addition to that element of the price, also, an amount equal to one-fourth of the net proceeds of the processing operation to be carried on by El Paso at the end of the gathering process, in its gasoline plant as soon as completed. There is included a guarantee to the producers that this second element of the price will amount to at least one cent per Mcf of gas sold or (in the case of Sinclair) one cent per gallon of liquids produced. The staff brief does not dispute the general arrangement, but the staff does object to that phase of the provision which guarantees the certain amount to the seller whether the processing is profitable or not. Sinclair's brief and some of the other producers quite sternly take to task this intrusion into what is evidently claimed to be a separate and private transaction of the parties, supposedly for the sale of liquid products of some kind which, it is said, is quite beyond the jurisdiction of the Federal Power Commission.

Passing, for the moment, the question on the merits, it is not at all concurred in that this is a separate transaction unregulable by the Federal Power Commission. The contracts themselves in the plainest of words belie this alleged dichotomy. Article XII, headed "Price," says, "The Buyer shall pay the Seller for the gas sold under this agreement (a) the price per one thousand (1,000) cubic feet set forth in Section 2 of this Article [21 cents] and (b) the amounts, or the liquid hydrocarbons in kind, as provided in Sections 6, 7 and 8 of this Article." Those sections provide for the producer to receive 25% of the net from El Paso's processing, guaranteed to amount to 1¢ per Mcf (using Exhibit 11, the Atlantic Refining Company contract, as typical). What is sold and delivered under these contracts is not liquid hydrocarbons at all, but it is natural gas, all of which is delivered at the mouth of the well or at the outlet of the separator (if one is installed at the wellhead).

The contracts show that the seller is to install whatever separator or other device is necessary to separate out "liquid hydrocarbons or water in liquid state from the gas so that such oil, liquid hydrocarbons or water in liquid

state may be prevented from entering Buyer's gathering line, all oil and liquid hydrocarbons so separated to be and remain the property of Seller." Thus the actual liquids emerging from the well along with the gas are to be separated by the seller before the sale and retained for its own benefit; there is no suggestion here of concern or jurisdiction of the Federal Power Commission in *that* liquid product. However, contained in the gas, as is well known, is a certain quantity of vaporous hydrocarbons or, as it is sometimes known, liquifiable hydrocarbons, which may in a processing plant be removed in liquid form. It was settled several years ago that this sale at the wellhead or at the outlet of the separator is jurisdictional since it is a sale of natural gas and not of some other product. It is a sale in interstate commerce, and it is a sale for resale, notwithstanding the program for processing by the buyer some miles down the line.[13] The fact that some small part of this gaseous product being sold may later on be converted into a liquid form, removed as gasoline, propane or otherwise, with the net balance of pipeline quality gas going on to the pipeline does not detract from the reality that the original sale at the outlet of the separator is a sale of gas, not of liquids. It is a sale of natural gas in its then entirety, not a sale of gas plus natural liquids, and it is a sale which the Federal Power Commission is required to regulate under the plain mandate of Section 1(b) of the Natural Gas Act.

Hence, there can be no agreement with the foreshortened view of the situation expressed in the brief which reads, "Staff does not dispute the disposal made by the producers and the pipelines of the *liquids* which they may receive." What is sold at the separator is not liquid, but gas, and the price for that gas in the contract is the one total of two items, that is, 21¢ per Mcf *plus* at least one cent and perhaps more, if the result of the processing works out to net more than four cents per Mcf. In other words, the contract price is not 21¢, but 22¢ and perhaps a little more, while, in the case of Sinclair, the price is 21¢ plus one cent per gallon and perhaps a little more. Hence the question is not the relatively innocuous one as to whether there must be striken the element of the contracts which guarantees that the extra allowance will be at least one cent; rather the question is whether the extra cent can be allowed at all in the face of the area price policy and related decisions, or whether the 17¢ area price must be the over-all one, with no supplement or fringe benefit or side payment or bonus of extra allowance for those extra, gaseous values which make possible the latter extractions of certain liquid products.

Primarily, it is the interpretation of the area price policy as announced that it is the price for pipeline quality gas, as the policy statement itself says (24 FPC 818, 819). The gas here sold contains certain extra values, in vaporous and non-liquid form, which may be profitably extracted without detracting from the pipeline quality of the residue gas which flows on to the consumer. Hence, I would not understand the area price policy for pipeline quality gas to stand in the way of an extra allowance for extra values over and above the pipeline quality level, if such extra payment or allowance keeps the total within the prevailing price as required by CATCO and other decisions.

For the purpose of comparing this sale, as to this feature, with other sales of the same time and place, we turn to Exhibit 30 and other parts of the record to see that there are at least two other large buyers of gas in this immediate area whose cases have been passed upon by the Commission. In each case a 17¢ price was arrived at by the conditioning route *and* a small extra allowance was permitted that appears to be substantially akin to the one cent extra payment here involved. The fact is that these are the same two sales which the parties

[13] *Deep South Oil Co. of Texas* v. *F.P.C.*, 247 F. 2d 882 (CA5, 1957).

here rely upon as establishing the prevailing or "in line" price which they hope to receive at 21¢ (plus the added penny here involved). The first of these is the Laverne sales to the Michigan Wisconsin Pipe Line Company [14] which is further explained in 22 FPC 391 at page 400. The certificated price is 17¢ plus certain adjustments for BTU content and processing for liquids. The value of that extra or side payment or bonus has been subject to some dispute in this and prior cases, but it was the Commission's view in the opinion just cited that the price "equates to approximately 17¢ per Mcf." The other substantial sale in this immediate area is that made to the Transwestern Pipe Line Company which was finally certificated by the Commission's order of July 11, 1962, in G–14871, 28 FPC 109. The net result of that certification appears to be to condition the sale to Transwestern at the area rate of 17¢ but in this case the extra or side payment takes the form of a provision in the sellers' contracts giving the sellers the right "to process, or to have processed . . . by conventional separation, compression, absorption, or other means" the natural gas to be delivered to Transwestern. In the present state of these three cases it is hardly possible to evaluate with entire precision the relative value of these three forms of a side payment for the extra value of the gas sold at the separator, that is, to compare the BTU adjustment allowed to those selling to Michigan Wisconsin and the processing privilege allowed to those selling to Transwestern with the comparable payment in the present case, which amounts to one-fourth of the proceeds of the processing with a guarantee of at least one cent.

It is not perceived that the "hold the line" policy of the law and the CATCO decision entirely forbids faint differences in the details of the sales. It is notable that the Examiner's decision in *Transwestern* at page 122 seems more or less to equate the processing privilege of the Transwestern suppliers with the BTU adjustment of the Michigan Wisconsin suppliers; likewise, so far as the present record tells the story on the point here, it is believed the sellers' right to one-fourth of the processing net revenues is a reasonably comparable allowance for the extra values quite similar in result, if different in form, from that allowed in the cases of Michigan Wisconsin and Transwestern. The public interest in such a substantial equation of the three purchasers in their dealings with the producers in this area is obvious since, as El Paso's brief points out, it would be manifestly unfair to place Michigan Wisconsin, Transwestern or El Paso in a position of competitive advantage. It is evident that until such time as the conditions of the business permit the prescription of standard forms of contracts,[15] no more precise equality of treatment is possible than that which is here afforded, that is (a) Michigan Wisconsin pays 17¢ plus a BTU adjustment, (b) Transwestern pays 17¢ and accords the right of processing, and (c) El Paso pays 17¢ plus one-fourth of the net from the processing.

The staff brief seems to indicate an interest only in the guarantee feature of this element of the price to be paid by El Paso to the nine producers. That is, the contract price is 21¢ [now 17¢] plus one-fourth of the net from processing guaranteed to be not less than one cent. I do not understand the staff brief to take exception to the basic provision for payment to the producer of one-fourth of the net revenues from the processing. Instead, the brief says at page 19, "The public should not *guarantee* the receipt of an extra cent per Mcf to the producers. Staff therefore recommends that the provision of each contract guaranteeing 1¢ per Mcf (or 4¢ [actually 1¢] per gallon) to the producers be eliminated as being inimical to the public interest." Why that is so is not clear at all. In the first place, the entire sale is fully jurisdictional, including this provision

[14] 19 FPC 989.

[15] *Cf.* the current policy-type proceeding under Docket No. R–200.

of a price for that part of the natural gas sold which is taken out at a later point, and it is not all to be described as a mere division of liquid hydrocarbons between the parties. It is simply part of the price of the sale, and the side payment of one-fourth of the net from the processing is allowable in addition to the area price of 17¢, just as a type of extra bonus was allowed in the cases of Michigan Wisconsin and Transwestern as explained above.

In the second place, it may be doubted that the guarantee over the long run will have a very marked application, since it will be to the interest of El Paso to process as much as possible and the amount does not appear to be predictably unreasonable. But it is possible, as noted above, that some of the production may have to "by pass" the gasoline plant and join the pipeline stream without the extraction of these enriching hydrocarbons.[36] In that event the 1¢ guarantee will, to use a legal phrase, save the producers harmless from loss occasioned by this choice of their buyer. In no other way, it seems to me, can these sales be made comparable to the nearby sales to Michigan Wisconsin and Transwestern already approved. In the spirit of the CATCO decision, it is the purpose of the certificate herewith issued to equate, as near as may practicably be, these three major sales to three major pipelines in the same immediate area, made at the same approximate time, and now being served in some part from the very same wells.

FURTHER FINDINGS AND CONCLUSIONS

Upon consideration of the applications filed herein, the evidence of record and the briefs filed, it is further found and concluded that:

(1) El Paso and Northern Natural are "natural-gas companies" within the purview of the Natural Gas Act; their proposed facilities will be used in the transportation and sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission and, together with their construction and operation, are subject to the requirements of Section 7(c) of the Natural Gas Act.

(2) The construction and operation of the facilities as proposed by El Paso and by Northern Natural and the change in the delivery of natural gas as proposed by El Paso are required by the public convenience and necessity, and a certificate should be issued to both applicants as hereinafter ordered.

(3) Each of the independent producer applicants, namely, The Atlantic Refining Company, Shell Oil Company as operator, Pioneer Production Corporation as operator, Riddell Petroleum Corporation, Pan American Petroleum Corporation as operator, Sinclair Oil & Gas Company as operator, Mr. H. H. Davis, The Superior Oil Company, and United Producing Company, Inc., is, or upon initiation of the proposed sale to El Paso will be, engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is or will be a "natural-gas company" within the purview of the Natural Gas Act.

(4) The sales of natural gas proposed by each of the independent producer applicants as set forth above are subject to the jurisdiction of the Commission and, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are subject to the requirements of Section 7(c) of the Natural Gas Act. Their sales are required by the public convenience and necessity and certificates of public convenience and necessity should be issued to each of them as hereinafter ordered and conditioned, such conditions being required by the public convenience and necessity.

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[36] Compare the discussion of a similar situation in the Commission's recent Opinion No. 353, March 7, 1962, in *Michigan Wisconsin Pipe Line Co.*, CP61-102, 27 FPC at page 458.

(5) El Paso, Northern Natural, and the nine producer applicants are able and willing to do the acts and to perform the services proposed and to conform to the Natural Gas Act and the requirements and regulations of the Commission thereunder.

ORDER

Accordingly, it is ordered, subject to review by the Commission, that:

(A) A certificate of public convenience and necessity is hereby issued to the Northern Natural Gas Company for the construction and operation of the facilities proposed in its application filed March 19, 1959.

(B) A certificate of public convenience and necessity is hereby issued to the El Paso Natural Gas Company for the construction and operation of the facilities and the rendition of the service as proposed in its application filed February 16, 1959, and the first and second supplements filed respectively, May 27, 1959, and June 2, 1960. Specifically, this certificate amends the certificate originally issued to El Paso and Northern Natural on May 1, 1953, 12 FPC 85, so as to change from Dumas, Texas, to Beaver County, Oklahoma, the point of delivery of gas by El Paso to Northern Natural of up to 50,000 Mcf per day out of the total delivery by El Paso under the exchange-transportation arrangement therein authorized and later enlarged, and also to eliminate, effective with the change, the 2¢ per Mcf charge heretofore authorized to be made by El Paso with respect to that share of its delivery to Northern Natural.

(C) Certificates of public convenience and necessity are hereby issued to The Atlantic Refining Company, the Shell Oil Company as operator, the Pioneer Production Corporation as operator, the Riddell Petroleum Corporation, Pan American Petroleum Corporation as operator, Sinclair Oil & Gas Company as operator, Mr. H. H. Davis, The Superior Oil Company, and United Producing Company, Inc., for the sales of natural gas in interstate commerce for resale as proposed in their several applications and supplements thereto, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, as described in their applications, subject to the conditions hereinafter set forth.

(D) The certificates herein issued to the above-named producer applicants are granted upon the express conditions that each shall file a rate schedule with the Commission within thirty days from the effective date of this order, the rate schedule to provide for an initial price, replacing the initial contract prices as proposed, not in excess of 17.0 cents per Mcf at 14.65 psia.

(E) The certificates herein issued to the producer applicants are granted upon the express condition that the allowance of the take-or-pay provisions in their contracts with El Paso is subject to the Commission's ultimate disposition with respect to such provisions in the rule-making proceedings in Docket No. R-199. Upon the establishment, by amendment to the Statement of General Policy No. 61-1, or by regulation, of a general policy governing such provisions in producer contracts, the producers accepting the certificates herein issued shall file within 30 days amended rate schedules in conformity therewith, acceptable to the Commission; provided, however, that the producers will not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantities.

(F) The certificates herein issued to the producer applicants shall be accepted in writing and under oath within 30 days from the date of the issuance of this order.

(G) The certificates issued to the producer applicants are not transferable and shall be effective only so long as each of the applicants continues the acts

or operations hereby authorized in accordance with the provisions of the Natural Gas Act, and the applicable rules, regulations and orders of the Commission.

(H) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Regulations thereunder. Such grant is without prejudice to any findings or orders which may have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants. Further, the action in this proceeding shall not foreclose or prejudice any further proceedings or objection relating to the operation of any price or related provision in the gas purchase contracts herein involved.

WILLIAM L. ELLIS,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO ELECTRIC COMPANY, DOCKET NO. E-7096

ORDER AUTHORIZING ISSUANCE OF PREFERRED STOCK

(Issued June 20, 1963)

El Paso Electric Company (Applicant) incorporated under the laws of the State of Texas, and qualified to do business in the State of New Mexico, with its principal place of business at El Paso, Texas, filed an application on May 20, 1963 for an order, pursuant to Section 204 of the Federal Power Act, authorizing it to issue and sell 40,000 shares of its $4.56 Dividend Preferred Stock, no par value, and exempting such issuance and sale from the Commission's competitive bidding requirements.

Applicant proposes to issue the 40,000 shares of Preferred Stock in accordance with the terms of a proposed purchase agreement, through a private sale to the following savings banks and insurance companies for the price of $100 per share plus accrued dividends, if any:

Purchaser	*Shares*
The Bowery Savings Bank, New York, N.Y.	10,000
Dollar Savings Bank of the City of New York, Bronx, N.Y.	10,000
The Life Insurance Company of Virginia, Richmond, Va.	5,000
Provident Life and Accident Insurance Company, Chattanooga, Tenn.	4,800
The Bank for Savings in the City of New York, New York, N.Y.	2,500
Hamburg Savings Bank, New York, N.Y.	2,000
The Manhattan Savings Bank, New York, N.Y.	2,000
Brevoort Savings Bank, Brooklyn, N.Y.	1,700
Continental American Life Insurance Company, Wilmington, Delaware	1,000
Tennessee Life Insurance Company, Houston, Texas	1,000
Total	40,000

Applicant proposes to pay a finders fee of ½ of 1% of the purchase price or $20,000 to Stone & Webster Securities Corporation in payment for their services in finding buyers for the new Preferred Stock.

By letter dated April 3, 1963, Docket No. IN-959, the Commission, pursuant to Section 34.2(k)(2)(ii) of its Regulations under the Federal Power Act, authorized Applicant to enter into negotiations for the underwriting and sale of the proposed issuance of Preferred Stock. Applicant now requests that the pro-

posed issuance be exempted from the competitive bidding requirements of Section 34.1a (b) and (c) of those Regulations upon findings as set forth in Section 34.1a(a)(4) thereof.

Applicant proposes to utilize the proceeds from the issuance and sale of the new Preferred Stock estimated at about $4,000,000 to provide a major portion of the funds required ($4,286,200 plus accrued dividends) for the redemption of two classes of presently outstanding Preferred Stock. These consist of 20,000 shares of $5.40 Dividend Preferred Stock and 20,000 shares of $5.36 Dividend Preferred Stock. The issuance of $4.56 Dividend Preferred Stock to replace $5.40 and $5.36 Preferred issues will result in an annual savings in Preferred Stock dividends of $32,800.

Written notice of the application has been given to the Railroad Commission of Texas and the New Mexico Public Service Commission, and to the Governor of each of those States. Notice of the application was also given by publication in the Federal Register on May 30, 1963 (28 F.R. 5399), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest with the Federal Power Commission, Washington 25, D.C., on or before June 14, 1963. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued January 25, 1962, El Paso Electric Company, Docket No. E-7017 (27 FPC 174).

(2) The proposed issuance of Preferred Stock as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) There is no affiliation, direct or indirect, through directors, officers or stockholders, or the ownership of securities, or otherwise, between Applicant and the Stone & Webster Securities Corporation.

(4) The fee proposed to be paid to the Stone & Webster Securities Corporation in connection with the proposed issuance of Preferred Stock does not appear to be unreasonable.

(5) Under the circumstances of this case, sufficient cause has been shown for exempting the proposed issuance of Preferred Stock from the competitive bidding requirements of Section 34.1a (b) and (c) of the Commission's Regulations under the Federal Power Act.

(6) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204 (f) of the Act, and the proposed issuance of Preferred Stock, as described above, is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(7) The proposed issuance of Preferred Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance of Preferred Stock, as described above, upon the terms and conditions and for the purposes specified in the application, is hereby authorized, subject to the provisions of this order.

(B) This authorization shall expire unless the transaction hereby authorized is consummated within 60 days from the date of this order.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of costs, or any other matter whatsoever which is now pending or which hereafter may come before this Commission or any other regulatory body.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TOWN OF HIGHLANDS, PROJECT NO. 693

ORDER AMENDING LICENSE

(Issued June 20, 1963)

Application was filed March 22, 1963 by Town of Highlands, licensee for Project No. 693, for amendment of Article 21 of its license for the project so as to make the new administrative annual charge formula set forth in the Commission's Order No. 205 issued June 6, 1958 in Docket No. R–129 (19 FPC 907) pertaining to State and municipal licensees, apply to Project No. 693.

The administrative annual charge as presently fixed under Article 21 of the license is based upon the authorized power capacity of the project, in accordance with Regulation 14 of the Commission's rules and regulations in effect when the license was issued. Under the new administrative annual charge formula, the assessment of annual charges is based upon the actual costs of administering Part I of the Federal Power Act.

The Commission finds:

(1) The license amended as hereinafter provided is in the public interest.

(2) The installed horsepower capacity of the project for the purpose of computing the capacity component of the annual charge is 300 horsepower, and the annual charge for reimbursing the United States for the costs of administration of Part I of the Federal Power Act, based on such capacity, is reasonable.

The Commission orders:

(A) The license for Project No. 693 is hereby amended, effective as of January 1, 1963, by changing Article 21 thereof to read as follows:

Article 21. The Licensee shall pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part 11 of the Commission's regulations. The authorized installed capacity for such purpose is 300 horsepower.

(ii) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands, $1.57.

(B) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, and Harold C. Woodward.

HYRUM CITY, PROJECT NO. 946

ORDER AMENDING LICENSE

(Issued June 20, 1963)

Application was filed March 18, 1963, by Hyrum City, licensee for Project No. 946, for amendment of Article 21 of its license for the project so as to make the new administrative annual charge formula set forth in the Commission's Order No. 205 issued June 6, 1958 in Docket No. R–129 (19 FPC 907) pertaining to State and municipal licensees, apply to Project No. 946.

The administrative annual charge as presently fixed under Article 21 of the license is based upon the installed horsepower capacity. Under the new administrative annual charge formulas, the assessment of such charges is based upon the actual costs of administering Part I of the Federal Power Act.

The Commission finds:

(1) The license amended as hereinafter provided is in the public interest.

(2) The installed horsepower capacity of the project for the purpose of computing the capacity component of the annual charge is 600 horsepower, and the annual charge for reimbursing the United States for the costs of administration of Part I of the Act, based on such capacity, is reasonable.

The Commission orders:

(A) The license for Project No. 946 is hereby amended, effective as of January 1, 1963, by changing Article 21 thereof to read as follows:

Article 21. The licensee shall pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part 11 of the Commission's regulations. The authorized installed capacity for such purpose is 600 horsepower.

(ii) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands, exclusive of those for transmission line purposes, $17.17; and

(iii) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands used for transmission line right-of-way only, $3.00.

(B) This order shall become final 30 days from the day of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgement of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

OPINION NO. 391

PAN AMERICAN PETROLEUM CORPORATION (OPERATOR), ET AL., DOCKET NO. RI61-532; J. M. HUBER CORPORATION, ET AL., DOCKET NO. RI61-533; KANSAS NATURAL GAS, INC., KANSAS NATURAL GAS, INC. (OPERATOR), ET AL., N. APPLEMAN COMPANY, ET AL., GRAHAM-MICHAELIS DRILLING COMPANY (OPERATOR), ET AL., WILLIAM GRAHAM OIL COMPANY (OPERATOR), ET AL., NORTHERN PUMP COMPANY (OPERATOR), ET AL., JOHN B. HAWLEY, JR., JOHN B. HAWLEY, JR., TRUSTEE, G. S. & NORMA D. DAVIDSON, G. A. KANE, ET AL., W. L. HARTMAN (OPERATOR), ET AL., SALMON CORPORATION, W. E. BAKKE OIL COMPANY (OPERATOR), ET AL., NATIONAL ASSOCIATED PETROLEUM COMPANY, ET AL., W. J. COPPINGER (OPERATOR), ET AL., THE PWC CORPORATION, ET AL., AUSTIN BRADY, PETROLEUM, INC., GRAHAM-MICHAELIS DRILLING COMPANY, AND WALTER F. KUHN, ET AL., DOCKET NO. RI62-100

OPINION AND ORDER REVERSING INITIAL DECISION OF PRESIDING EXAMINER, ACCEPTING RATE FILINGS, AND DENYING PETITION TO REOPEN PROCEEDINGS

(Issued June 20, 1963)*

Syllabus

1. In holding that any assignees may file rate schedules, Commission *distinguishes Humble* and *Midstates*—noting that here assignees include operator and working interests with respect to assigned property. P. 1220.
2. Conceding that permitting assignees to file may create additional administrative burdens, Commission *observes* that limiting filing to signatory party would cause at least an equal number of administrative problems. P. 1220.
3. Circumstances that area rates would not embody individual costs of particular assignees, should not bar assignees from filing separately where they in fact act as operators. P. 1221.
4. Commission *concludes* that assignees of leases under "farmout" arrangement have sufficient "signatory status" to file for rate increases. P. 1222.
5. Commission *orders* the acceptance for filing of assignees' rate schedules and related filings, in proceeding involving Section 154.91 of the Regulations under the Natural Gas Act. P. 1222.

Carroll L. Gilliam, William J. Grove and *R. Harry Landt* for Pan American Petroleum Corporation

Thomas O. Moxcey for J. M. Huber Corporation and Prime Drilling Company

Norman Jeter and *Dale E. Doty* for Kansas Natural Gas, Inc. and Kansas Natural Gas, Inc. (Operator), et al.

Dale M. Stucky and *Dale E. Doty* for N. Appleman Company, et al.

William F. Schell and *Dale E. Doty* for Graham-Michaelis Drilling Company (Operator), et al. and William Graham Oil Company (Operator), et al.

Wheeler Smith and *Jerome Ackerman* for Northern Pump Company; John B. Hawley, Jr., John B. Hawley, Jr., Trustee; G. S. & Norman D. Davidson; and G. A. Kane, et al.

William Schell for Petroleum, Inc., et al.

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*Initial decision appears on P. 1222. Opinion clarified and rehearing denied on August 16, 1963, 30 FPC 495.

Charles S. Rhyne and *Herzel H. E. Plaine* for The Municipal Group for Opposing Increase in Natural Gas Rates, comprising Cities of Altamont, Kansas, et al.

Conrad C. Mount, C. V. Wheeler, C. H. Mullendorf and *W. R. Russell Gorman* for Cities Service Gas Company

Edward D. Means, Jr. for Kansas and Missouri Municipal Group

Francis J. Gilmore for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

WOODWARD, *Commissioner:*

The basic issue in this case is whether rate increase filings may be made only by a party who has physically signed the natural gas sales contract; or may assignees pursuant to a "farmout" arrangement also file for rate increases, even though they did not themselves sign the contract. The examiner holds that only physical signatories may file. We hold that any assignee may file, for reasons set out below.

Pan American Petroleum Corporation (Pan Am), as seller, and Cities Service Gas Company (Cities), as buyer, executed a contract on June 23, 1950, for the jurisdictional sale of natural gas to be produced from approximately 600,000 acres in the Kansas-Hugoton Field. Thereafter, Pan Am executed some 168 "farmout" agreements[1] by which Pan Am agreed to assign various leases covering areas which it dedicated under the contract with Cities.[2] A number of the assignees under these farmout arrangements have filed for a rate increase in the basic contract from 7.5036 cents to 10.7195 cents per Mcf, as did Pan American. Since the applicable area rate level for proposed increased rates is 11 cents per Mcf, the Commission has terminated the suspension order after originally suspending the increases because of a protest by Cities.

Cities originally protested the filing on the grounds that Pan Am is the only "signatory" to the June 1950 contract and, as such, should have covered in its own filing the interests of the farmout assignees. In effect, Cities was arguing that the farmout assignees, not having physically signed the gas sale contract, were ineligible to file for a rate increase under section 154.91 of the Commission's regulations under the Natural Gas Act.[3]

After the Commission, by order of August 4, 1961, terminated the suspension of these proposed rate increases, which it had originally directed by order of June 22, 1961, Cities Service filed application for rehearing. Thereupon, the Commission, by order of September 29, 1961, reopened these proceedings and set them down for hearing to determine if the assignees had properly filed for them-

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[1] A "farmout" is a standard arrangement in the oil and gas industry where the lessee, for reasons of time, money, or otherwise, cannot drill a well on a lease he holds but does not want to give up without its value being judged by drilling. The "farmout" operator initially drills at his own expense; and upon the completion of a commercial well, he becomes owner of the working interest and operates the well or arranges for its operation, while the assignor usually keeps only an overriding royalty.

[2] The assignees are bound to sell their gas to Cities, since the assignments specifically provide that they are subject to the provisions of the Pan American-Cities contract. In addition, since no novation has occurred, Pan American also remains bound.

[3] Section 154.91 provides for filings by signatory operators and coowners pursuant to a gas sales contract, and section 154.91(d) provides that a "non-signatory co-owner" may not file rate schedules, rate changes, or certificate applications, etc. Pan Am does not need abandonment authority in order for the assignees to take over these sales and make the filings. Not only has the Commission ruled several times that where a successor continues a sale no abandonment authority is needed, but, in addition, these are farmout arrangements. Therefore, only nonproductive acreage is initially involved, and so abandonment authority would not be needed in any event.

selves or whether Pan Am was required to cover all the working interests in its own rate filings. The question of justness and reasonableness of the proposed rate increases is not at issue.

The June 1950 contract permits assignments of interest by Pan Am. However, Cities pays Pan Am each month for gas purchased, and Pan Am calculates and disburses their respective share to each of the interest owners. This is an unusual method of payment, for, under most contracts the purchaser distributes the revenues to the various interests.

Cities advanced a number of reasons for its objection to anyone's filing other than Pan Am, the party who signed the contract. Cities' argument is primarily that if each of the many farmout assignees were allowed to file, this would greatly increase the number of filings and thereby put a much greater burden on both Cities and on the Commission. They suggested that each working interest owner would shift from rate schedule to rate schedule as he thought desirable, and Cities would not be able to tell what interest came under what rate schedule; that Cities would need to tell what interest came under what rate schedule; that Cities would need many more accounting personnel to compute each interest owner's share and rates and would have to do many expensive title examinations to determine the ownership rights of each filing party, and that this would compel Cities to negotiate price and to otherwise deal separately with each working interest owner with respect to disputes and claims under its contract, in derogation of Cities' valuable property right to deal with Pan Am alone.

Cities urged that the regulations, in talking or "signatory party," refer only to the person who physically signed the contract. Cities argued that the respondents were trying to turn the farmout assignments into a novation or otherwise permit Pan Am to avoid its duties to perform under the contract. Cities complained that it would now have manifold problems in determining who owns the gas, what rate schedule covers it, the rates that apply to certain volumes, and argued that Pan Am should warrant that the cash paid by Cities was correct and in full payment, or else Cities would have to determine titles, rate schedules and rates for itself, which would involve a great deal of work. Cities also urged that there are a number of cases, including *Humble Oil and Refining Company* v. *F.P.C.*, 14 FPC 592; *Midstates Oil Corporation* v. *F.P.C.*, 14 FPC 703; *Hunt Oil Company* v. *F.P.C.*, 16 FPC 1292; the *Cotton Valley* case (*Midstates Oil Corporation* v. *F.P.C.*), 20 FPC 70; and *Sun Oil Company* v. *F.P.C.*, 256 F. 2d 233 (CA5 1958), cert. den., 358 U.S. 872, which are authority for and support Cities' position here.

The Examiner's Decision

The examiner, in a decision issued January 23, 1963, held that farmout assignees who have not signed the sale contract are not "signatory owners" and do not have "signatory status," and therefore, they fall within section 154.91 (d), which provides that:

> . . . a non-signatory co-owner may not file rate increases, rate changes, or certificate applications where his gas is being sold or delivered by the operator according to the terms of the contract to which the co-owner is not a signatory party.

Accordingly, the examiner held that Pan Am's filings should be seen as covering the interests of all its assignees and that the assignee's filings be vacated, rejected, and canceled. In support of his position, the examiner partic-

ularly urged that the main purpose of Order No. 190, September 27, 1956, 16 FPC 492, which is codified in section 154.91 of the regulations, is to assure that Commission procedures "will be simple and clear, and at the same time reduce, as much as possible, the work of processing the thousands of filings by independent producers."[4]

The examiner suggested that the Commission had previously permitted assignees to file—only in uncontested cases where the issue was not raised or by letters from the Secretary of the Commission, which he stated are not determinative. The examiner suggested that otherwise Cities might have to engage in as many separate and different rate proceedings as there are assignees who make filings. He also argued that if the Commission were to determine rates other than on the traditional cost-of-service approach, it would not give different rates to each assignee, so that filings by anyone other than the signatory party would not serve a useful purpose. The examiner also cited *Humble Oil Company*, 14 FPC 845; *Midstates Oil Corporation*, 14 FPC 703; *Hunt Oil Company*, 16 FPC 1292; and *Sun Oil Company* (5th Cir., 1958), 256 F. 2d 233, as authority for his position. He cited the *Sun Oil* case for the view that it could not be assumed that the person who filed would advance his own interest to the prejudice of non-operating co-owners or that the Commission would abuse its discretion by denying such a co-owner the right to intervene wherever its rights of substance are involved.

The examiner argued also that to permit a non-signatory to file would encourage assignees to shift their interests from a low-cost to a high-cost non-signatory operator for rate purposes. He also urged that there are several obligations which are performed by Cities in terms of the contract as a whole, including certain Btu adjustments and take or pay provisions.

The Exceptions to the Examiner's Decision

The assignees argue that the Commission has had a consistent practice of treating an assignee as having "signatory status," citing a number of communications between the Commission and assignees in which the Commission (or its Secretary) stated that, by virtue of assignment, the assignee had "signatory status." They particularly urge that this Commission practice is consistent with both industry practice and the practical needs of the situation. The mere fact that a party originally signed the sales contract does not mean he has either the information for or the interest in filing, as compared with assignees who are the working interest owners and ordinarily are the operators or arrange for operators (Pan Am and the assignees here, with one exception, are operators of the wells involved). Thus, the respondents point out that if Pan Am must file for the assignees, the assignee may have to rely upon a filing by a party whose interests are different than his or even antagonistic. For example, an original signatory may have an interest in making an overall rate settlement which may be to the disadvantage of particular assignees. More basic, the respondents emphasize that it is really the farmout assignee who is making the jurisdictional sale of natural gas and not only has access to the facts with respect to the wells and the sale of gas, but is the current operator and the current working interest owner and, as such, the party with whom the Commission should have contact through filings.

The respondents also point out that the case authorities cited by Cities all essentially involved situations where non-signatory co-owners sought to file in

[4] 16 FPC 492 at 493.

circumstances where they would have duplicated filings by the operator—none of the cases cited by Cities involving farmout assignees as here.

Both the respondents and Cities went into great detail in their briefs over whether Cities would or would not be confronted with a great many additional and burdensome accounting obligations and requirements to examine title, etc., if the assignee were permitted to file. Thus, Cities argued that there were 168 assignee interests which would in turn be subdivided, leading to a great multiplicity of filing. In fact, although the June 1950 contract is a large gas purchase with an unusually large number of farmout assignees, there have been only 24 rate schedules filed under that contract in all the years since producer regulation was instituted. It would appear that Cities has overstated the burdens imposed by permitting assignees to file.

The staff has taken essentially the same position as the respondents; that is, that the Commission practice has long been to permit filings by farmout assignees, who are, in effect, the parties making the jurisdictional sale of gas, owning the working interest, and, in most cases, operating the property or arranging for its operation. They point out that if a signatory party sells out, merges, reorganizes, or otherwise gives way to a successor party, the only practical solution is to permit the successor to file. Essentially, assignees are successor parties, whether to portions of, or all of, the contract, and here the basic contract permits assignment.

The staff argues that although Cities has suggested that permitting assignees to file would place a tremendous burden on it and lead to a huge multiplicity of filings, in fact this has not, and is unlikely to, work out in this manner. As against Cities' argument that to permit assignees to make separate rate filings would result in shifting from one rate schedule to another, a new interest owner can elect to remain under the rate schedule or may choose to make his own, but he cannot merely shift rate schedules without Commission approval.

We would distinguish the authorities cited by Cities, pointing out that, in the *Humble Oil* and the *Midstates Oil* cases, in 14 FPC 592 and 703, the non-operating co-owners had contracted to let the operators market the gas, the operators contracted with the purchasers by a contract to which the non-operating and signatory co-owners were not parties and, therefore, the Commission refused to permit them to file. This is quite different from the instant proceeding, where the assignees include the operator and the working interests with respect to the assigned property. Not only did the instant contract permit assignment, but the performance of Pan Am's obligation was not so personal as to require performance by Pan Am alone; and in any event, both the assignees and Pan Am have a responsibility to perform the contractual obligations. Although this approach might lead to some multiple filings, there are more important considerations here, including the importance of keeping the Commission in close contact with the current operators and working interest owners. Also, it is rare for anyone other than the operator or a party acting as agent for the other working interests to be interested in making separate rate filings. Both the number of assignees and the number of separate rate filings involved in the present case are unusual.

Even though permitting assignees to file may create some additional administrative burdens, to limit filing to the party who physically signed the contract would cause at least an equal number of administrative problems. Thus, assignees who are not permitted to file, but who want to file for a rate increase which the signatory party did not want, or assignees who did not want a rate increase which the signatory party wanted, would continually ask the Com-

mission for exceptions to a strict rule against their filing. Similarly, if the parties who make actual jurisdictional gas sales are not the ones who can file rate schedules, the Commission's problems in obtaining information of various sorts would most certainly be multiplied.

The examiner suggested that, upon a shift to an area rate approach, it would not serve any useful purpose to have filings by any party other than one such as Pan Am for rate or certificate purposes, and that rates should not be determined on a cost basis other than the costs of Pan Am, the party with whom Cities executed the contract. Even though area rates will not embody the individual cost of particular assignees, this should not result in barring assignees from filing separately where they in fact act as operators. At the same time, we do recognize the possibility that under individual cost-of-service concepts, assignee filings could lead to selection of high-cost operators because of the assumed effect of such a choice on the producer cost which could be justified, see *Slade, Inc. (Operator), et al.*, Opinion No. 376, issued January 3, 1963, 29 FPC 11.

We suggest that the basic result of area pricing will be to make the entire issue in this case less significant. The assignees will become the respondents in area proceedings; and cost information will be obtained from them rather than from the assignor alone, and this may serve to increase the Commission's collection of comprehensive data.

Huber's Petition to Reopen the Proceedings

Huber Corporation filed a petition on February 11, 1963, requesting the Commission to reopen the proceedings herein. They urged that "additional facts and law of compelling materiality" have developed since the conclusion of the hearing before the presiding examiner. However, there does not appear to be anything of sufficient consequence in the materials cited by Huber to warrant reopening the proceedings, since we conclude that the examiner's decision in this case should be reversed. Although Huber argues that the examiner refused to review or rule upon the evidence, arguments and authorities which it presented, the examiner's decision adequately deals with all the significant points made by Huber.

We conclude that there is little support for the examiner's view that the regulations must be interpreted so literally as to exclude filings for farmout assignees where they were not physically a signatory to the contract. It seems clear that such filing provisions could not work, except where some provision was made for filing to be done by the successor in interest to a signatory party. Where that succession is due to a merger of an organization or a complete sale of all the successor party's interest, there is little objection to the successor's filings. Essentially, the assignee is in that same position here with respect to part of the signatory party's interest. It is difficult to avoid the practical fact that it is the assignee who is making the jurisdictional sale of gas and that if Commission filings are to serve to keep the Commission in contact with current operators and working interest owners, the examiner's conclusion would be impractical. We would argue that as a matter of contract law there is enough "privity of contract" between an assignor and assignee so that an assignee does in fact have a "signatory status."

Furthermore, the well-established administrative practice of the Commission must be given weight in interpreting the Commission's own regulations. This is particularly so, since permitting the assignee to file coincides with the industry

practice in the area. To deny farmout assignees the right to file might serve as a deterrent to the well-established industry practice of making farmouts.

The arguments either of administrative inconvenience for the Commission or of an undue burden upon Cities Service are not compelling here. Not only is this an unusual case involving a large number of assignees (but where even so there have been only 24 filings strictly attributable to assignees), but Commission and industry history does not indicate any reason to anticipate either the flood of filings or the massive burdens feared by Cities.

The Commission further finds:

(1) The assignees of leases covering acreage which Pan Am dedicated under its June 23, 1950, contract with Cities have a sufficient "signatory status" to be eligible to file for a rate increase under section 154.91 of the Commission's regulations under the Natural Gas Act.

(2) In view of this finding, no useful purpose would be served by granting Huber's petition to reopen these proceedings.

The Commission orders:

(A) The order of the presiding examiner herein, issued January 23, 1963, is reversed.

(B) The certificate of public convenience and necessity, rate schedules, and all filings pertaining to the assignees under the basic June 23, 1950, contract between Pan Am and Cities, as described in the examiner's decision herein, are accepted for filing.

(C) Huber's petition to reopen these proceedings, filed on February 11, 1963, is hereby denied.

INITIAL DECISION

ON THE LAWFULNESS OF RATE FILINGS BY NON-SIGNATORY PARTIES

(Issued January 23, 1963)

BINDER, *Presiding Examiner:* This proceeding was set down for hearing for the purpose of determining whether a rate increase filing made by Pan American Petroleum Corporation (Pan American),[1] designated as Supplement No. 88 to its FPC Gas Rate Schedule No. 84, whether another rate increase filing made by J. M. Huber Corporation, *et al.* (Huber) designated as Supplement No. 16 to its FPC Gas Rate Schedule No. 8, and whether 20 additional rate increase filings by the parties named in Docket RI62-100 were made in conformity with the provisions of the Natural Gas Act and the Commission's Regulations thereunder.

On June 23, 1950, Pan American, as seller, and Cities Service Gas Company (Cities) as buyer, entered into a gas contract covering the sale of natural gas for resale in interstate commerce to be produced from the Kansas-Hugoton Field. Subsequently, Pan American executed "farmout" agreements with various persons (some of whom are respondents in these proceedings) in which Pan American agreed to assign various leases covering specified areas in the Hugoton Field which it held under its contract with Cities. These assignments were subject to the Pan American-Cities contract under which Pan American was obligated, among other things, to engage in an orderly drilling program in the development of the field and the connection of wells by

[1] Formerly Stanolind Oil and Gas Company (Stanolind). References in the text of this decision to Stanolind or Pan American are references to the same person.

Cities within the express limits of the expenditures required by Cities to make connections (Art. VI, Ex. 1). Pan American and the assignees in these proceedings (with one exception) are operators of certain of the wells in the Kansas-Hugoton Field which produced the natural gas involved which is the subject of sale herein. All this gas is delivered to Cities as buyer. Insofar as the filings in dispute in this case are concerned, the respondents (other than Pan American) were not signatory parties to any contract of sale of natural gas. Nevertheless these nonsignatory parties claim that they are entitled to make individual and separate rate increase and other filings under Section 154.91 of the Commission's regulations.

All parties and the Staff concede that the provisions of Section 154.91 govern the filing rights and requirements which are in dispute in this proceeding.

It is undisputed that a person who is not a signatory party or that a person who has not acquired "signatory status" to a contract for the sale of natural gas, may not make rate increase or other filings under Section 154.91 of the Commission's regulations. The contention of the respondents is that while they were not signatory parties they each acquired the "status" of a signatory party and each respondent claims therefore to be entitled to make the same filings under Section 154.91 as if it were, in fact, a signatory party. It follows from the respondents' statement of position that they recognize that they must establish that they have attained the "status" of a signatory party in order to have the right under Section 154.91 to make the filings which are challenged here.

The rate increase and other filings of the respondents are challenged by Cities as not having been made in conformity with Section 154.91 of the Commission's regulations because the respondents, with the exception of Pan American, are not signatory parties to the June 23, 1950 contract and because there is no provision in Section 154.91 by which signatory status can be acquired by or conferred upon a nonsignatory party.[2] Accordingly, the primary legal problem in this case is whether Section 154.91 can reasonably be interpreted as containing a provision for the conferring of "signatory status" upon a person who was not a signatory to any contract for the sale of natural gas in interstate commerce and whether respondents as nonsignatories attained signatory status.

On May 22, 1961 Huber and on May 23, 1961, Pan American respectively, tendered for filing proposed increases in rates to be charged to Cities for the gas involved in these proceedings. By these filings Pan American and Huber sought and obtained without formal hearing an increase from 7.5036 cents to 10.7195 cents per Mcf at a pressure base of 14.65 psia for natural gas purchased by Cities from wells operated by them in the producing area of Hugoton Field, Finney County, Kansas (*i.e.*, an increase in rate level of almost 50%). The Pan American and Huber filings reflected an annual increase of $2,399,972 for Pan American and $18,941 for Huber. Separate rate increase filings were tendered by each of the other producers named in the caption under Docket RI62–100, and these respondents sought the same rate levels sought by Pan American and Huber and this further increased the cost of gas to Cities.

The rate schedule numbers, supplement numbers, the interests covered and the effective dates in 1961 of increased rates of the respondents whose filings

[2] The respondents other than Pan American do not claim that there was a novation and therefore no determination is made here applicable to a situation where a novation has occurred.

were challenged as not having been made in conformity with the Commission's Regulations in Docket RI62–100 were as follows:

Producer [1]	Rate schedule No.	Supplement No.	Effective date of increased rate	Interests covered
Kansas Natural Gas, Inc.	12	6	7/21/61	Kansas Natural Gas, Inc. F. Connor Creigh, Agent.
Kansas Natural Gas, Inc. (Operator), *et al.*	20	5	8/25/61	F. Connor Creigh, Agent. Producers Gas Equities, Inc. F. Connor Creigh, Agent.
N. Appleman Company, *et al.*	1	11	7/27/61	Nathan Appleman. John S. Bugas. Max M. Fisher. I. L. Goldman. Raymond F. Kravis. M. S. Schiller. Wm. E. Slaughter, Jr. H. E. Wenger. Oil and Gas Property Management, Inc. (now Nafco Oil and Gas, Inc.).
Graham-Michaelis Drilling Company (Operator), *et al.*	11	11	8/ 5/61	Osage Oil and Gas Company. Graham-Michaelis Drilling Company. Wm. Graham Oil Company. American Climax Petroleum Corp. Joseph M. Mazer.
William Graham Oil Company (Operator), *et al.*	5	5	8/ 5/61	Wm. Graham Oil Company. Helmerich and Payne, Inc.
J. M. Huber Corporation (Operator), *et al.*	8	16	6/24/61	J. M. Huber Corporation, Prime Drilling Company.
Northern Pump Company (Operator), *et al.*	5	7	9/ 7/61	Northern Pump Company. John B. Hawley, Jr. G. A. Kane. G. S. Davidson. C. M. Underwood. Rosita Hawley. Myra Hofmeister. John W. Shultz. Milton C. Neuman. John B. Hawley, Jr., Trustee.
John B. Hawley, Jr.	1	7	9/ 9/61	John B. Hawley, Jr.
	1	8	9/ 9/61	
John B. Hawley, Jr., Trustee	1	3	9/ 9/61	John B. Hawley, Jr., Trustee.
G. S. Norma Davidson	1	5	9/ 9/61	G. S. Davidson. Norma D. Davidson.
G. A. Kane, *et al.*	1	5	9/21/61	G. A. Kane.
W. L. Hartman (Operator), *et al.*	3	6	9/18/61	W. L. Hartman. J. E. Goble. W. F. McConnor. James M. Straub, Estate. Arthur Miller. John W. Galbreath.
Salmon Corporation	1	1	9/18/61	Salmon Corporation.
W. E. Bakke Oil (Operator), *et al.*	1	5	10/ 1/61	W. E. Bakke. Herbert L. Dillon. T. J. Goad. Dean Witter.
National Associated Petroleum Company, *et al.*	1	4	10/12/61	James R. Bancroft. Margaret Beogner. Donaldson Brown. Alfred Corning Clark. Stephen C. Clark. Stephen C. Clark, Jr. Susan Vanderpoel Clark. Alan L. Corey. B. Eikan, Estate. John T. Snyder, Estate. Edward P. Farley, Estate. Burtner Fleeger, Estate. Jeanette R. Fleeger. O. C. Frohnknecht. David T. Layman, Jr., Estate. Archibald A. Gulick, Estate. D. Heineman. International Minerals & Metals Corp. Irving D. Isko. Mary Woodard Lasker. Albert D. Lasker, Estate. Forrest H. Lindsay. Charles E. Main.

See footnotes at end of table.

Producer [1]	Rate schedule No.	Supplement No.	Effective date of increase rate	Interests covered
National Associated Petroleum Company, *et al.*—Continued	1	4	10/21/61	Alastair B. Martin. Esmond B. Martin. Henry B. Martin. Jeremiah Milbank. P. H. Peterson. Pierre Philippe. Henry C. Phipps Estate. Howard Phipps. John H. Phipps. Hubert B. Phipps. Michael Phipps. Ogden Phipps. Anna M. Rosenberg. Stanley M. Rumbough, Jr. Alfred P. Sloan, Jr. Stryker and Brown. Ballie W. Vinson.
W. J. Coppinger, (Operator), *et al*...	6	16	(3)	J. B. Gander, Estate. Louis J. Orabka. Henry L. Ruppert. Edward L. Taylor. Sharich and Company.[1] Security Mutual Bank and Trust Co.[2]
The PWC Oil Co., *et al*.....	1	4	(3)	PWC Oil Company. H. M. Gillespie. John O. Wing. Jack Wolfe and Wilda Wolfe
Austin Brady.....	2	8	(3)	Austin Brady.
Petroleum, Inc.....	3	8	(3)	Petroleum, Inc. C. H. Bjerknes. Dorothy B. Davis. W. E. Fay. W. D. Ferguson. Ruth G. Fink. Albert Frahm. James S. Garvey. Jean K. Garvey. Olive W. Garvey. R. H. Garvey. Shirley F. Garvey. Willard W. Garvey. Almyra B. Gordon. W. B. Harrison. Wilbur Harrison. L. H. Heedwohl, Trustee. Joseph S. Hoover. J. M. Jackson. L. F. Kepley. John Kriss, Olivia G. Lincoln, Elizabeth Lyon, Robert P. Marcus, Joseph E. Merrion, Elizabeth M. Mize, Wm. H. Muchnic, A. B. Nuss, Glenn I. Voyles, Theodore O. Yntema.
Graham-Michaelis Drilling Company.	19	2	----------	Graham-Michaelis Drilling Co.
Walter F. Kuhn, *et al*.....	7	4	10/19/61	Walter F. Kuhn. Management Service, Inc. R. D. Burris. H. M. Gillespie.

[1] Independent producers who have filed, except as indicated, for the 10.7195¢ per Mcf increased rate under the June 23, 1960, contract between Pan American Petroleum Corporation and Cities Service Gas Company.
[2] Respondent has not filed a notice of change proposing to increase its rate.
[3] No Commission action has been taken.

Cities Service is not contesting the increase in the rate level in this particular case but is contesting only the lawfulness of the individual and separate filings made herein. It is clear, however, that Cities is not taking the position that it is agreeing thereby that it is bound by or subject to these separate filings made individually by the respondents or by separate filings which may be made by such respondents or their assignees in the future.

The Commission permitted Cities Service Company (Cities) and the Municipal Group for Opposing Increase in Natural Gas Rates[3] to intervene, but would not permit the increased rates filed for here to be contested.

Pan American as seller and Cities as buyer entered into a gas purchase contract covering the sale of gas produced from the Kansas-Hugoton Field on June 23, 1950. Pan American and Cities were the only signatory parties to the basic contract. Later Pan American made numerous assignments of leases to others. In a number of cases the persons to whom Pan American assigned leases made assignments including some to the respondents named in the caption.[4]

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[3] Consists of the Kansas Cities of Altamount, Atchison, Chanute, Charryvale, Downs, Erie, Girard, Grenola, Howard, Iola, Melvern, Meriden, Osage City, and Perry; the Missouri Cities of Carl Junction, Carrillton, Carthage, Clinton, Independence, Joplin, Kansas City, Marshall, Neosho, Nevada, Oronogo, Pierce, Platte City, Springfield, St. Joseph, Waverly, Webb City; and the City Utilities of Springfield, Missouri.

[4] For example in N. Appleman Co., *et al.*, FPC Gas Rate Schedule No. 1, Docket No. RI62–100, it appeared that following the execution of the June 23, 1950 contract between Cities and Pan American, Pan American made an assignment to Aurora Gasoline Company of described leases in the Kansas-Hugoton Field on November 26, 1952. On February 17, 1953, Aurora executed an assignment of one-half of its right, title and interest to N. Appleman Company.

This file also indicated that on May 14, 1953, Pan American made an assignment of certain leases in the Kansas-Hugoton Field to Kansas Natural Gas, Inc. Thereafter, the latter assigned the same leases to Nathan Appleman. This filing also showed that on May 6, 1953, Pan American made an assignment to Kansas Natural Gas, Inc., and that on July 3, 1953, Kansas Natural made an assignment of these leases to Nathan Appleman.

An examination of the Kansas Natural Gas, Inc. (Operator), *et al.*, FPC Gas Rate Schedule No. 20 file shows that in Supplement No. 6 thereto Pan American on December 31, 1953 assigned to Kansas Natural Gas, Inc., all its right, title and interest in leases in Haskell County, Kansas. Thereafter, and on January 26, 1954, Kansas Natural Gas, Inc. assigned an undivided one-half interest in the above-mentioned leases to the Producers Pipe Line and Gas, Inc. In Supplement No. 8 Producers Pipe Line and Gas, Inc. assigned a one-half interest in the above leases to Producers Gas Equities, Inc.

An examination of the file in Salmon Corporation, FPC Gas Rate Schedule No. 1 (Formerly Panax Oil and Gas Company, FPC Gas Rate Schedule No. 1) shows that on March 30, 1953, Pan American made an assignment to Lafayette Oil Company of its right, title and interest in certain leases described in the agreement. Thereafter, Pan American assigned certain additional leases to Lafayette. Subsequently by separate instruments Lafayette assigned the interests it acquired from Pan American to Panax Realty Company. Presumably, Panax Oil and Gas Company is the successor to Panax Realty Company, but the rate schedule is not specific on the point.

In another filing by PWC Oil Company, et al., FPC Gas Rate Schedule No. 1 (Formerly Walter F. Kuhn, *et al.* FPC Gas Rate Schedule No. 13) Stanolind assigned certain leases to John R. Le Bosquet and Walter Kuhn. Thereafter, on November 30, 1956, Walter Kuhn, d/b/a Walter Kuhn Drilling Company assigned to PWC Oil Company an undivided half-interest in such leases.

In a large number of the assignments provision is expressly made whereby the person receiving an assignment from Pan American is expressly authorized to assign to others, subject to an agreement, that any offer received by the assignee will be made known to Pan American which would have the first option to purchase said assignment. In these circumstances, it becomes exceedingly clear that there is no limitation whatever on the number of assignments from one assignee to another which may be made. It was the contemplation of Pan American and all assignees of Pan American that they, in turn, would have the right to sell interests which they acquired. The result through the years has been a proliferation of the filings which this Commission has been receiving.

It should be observed that most of the information recounted above is immaterial to any rational consideration of rates and is not helpful to the Commission insofar as its certificate functions are concerned. The above information constitutes a tiny sample of the immaterial matter contained in the Commission's files, which appear to be loaded with documents which should never have been accepted for filing, serve no useful purpose, and impose onerous conditions and unnecessary expense to the industry and the Commission. So far as can be observed they only illustrate the essential validity of Parkinson's law. Refusal to accept these unnecessary filings would serve to reduce the vast volumes of papers on file and thus to make our procedures more understandable and efficient.

Huber and the 20 additional parties named in the caption under Docket RI62–100 are assignees of the leasehold interests covered by the basic contract contained in Pan American's FPC Gas Rate Schedule No. 84 and each assignee has filed its own separate rate schedules.

The Commission issued a number of orders in these proceedings of which the most important were those issued on September 29, 1961 and October 20, 1961. By its order of September 29, 1961 the Commission reopened the proceedings in Docket Nos. RI61–532 and RI61–533 for hearing, and by its order of October 20, 1961 the Commission consolidated Docket RI62–100 for hearing with the former dockets.

Both in the September 29, and October 20, 1961 orders the Commission made it clear that in these proceedings "the lawfulness of the rate filings, not the justness and reasonableness of the increased rates was the issue to be resolved in these proceedings" and it had "no intention of permitting an inquiry into the justness and reasonableness of the increased rates involved herein." [5]

In September 29, 1961 order the Commission pointed out, among other things, that Cities had protested:

> (1) that the filing does not cover all the original interests set out in the basic contract included in Pan American's FPC Gas Rate Schedule No. 84 [3] (2) that the filing is not in compliance with the requirements of Section 154.91 of the Commission's Regulations, (3) that the termination without notice of hearing deprives it of due process, and (4) that the suspension proceeding is necessary to preserve Cities Service's refund rights if Pan American's tender is subsequently found to be improperly filed and is rejected.
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> In its application for rehearing, as such relates to termination of the *Huber* proceeding in Docket No. RI61–533, Cities Service protests the filing designated as Supplement No. 16 to Huber's FPC Gas Rate Schedule No. 8, and states (1) that Pan American, as the sole seller signatory party to the June 23, 1950, Pan American-Cities Service gas purchase contract which comprises the basic instrument in Pan American's FPC Gas Rate Schedule No. 84, should have included the interests of Huber and others to whom Pan American has "farmed out" acreage dedicated under the aforementioned gas purchase contract, when it filed the Notice of Change which is the subject of the processing in Docket No. RI61–532, (2) that Huber has not become substituted for Pan American in the contract in question, (3) that Pan American is the party responsible for the performance of said contract, (4) that Huber is not a signatory party to the instrument, (5) that Huber has no status under the Commission's Regulations to make the filing which is the subject of the proceeding in Docket No. RI61–533, and (6) that in making the filing, Huber is attempting to prejudice Cities Service's contractual rights.

[3] Cities Service also objects to the separate rate schedule filings of assignees of interests covered by the basic contract contained in Pan American's FPC Gas Rate Schedule No. 84, including that of J. M. Huber Corporation which is the subject of the proceeding in Docket No. RI61–533.

On October 20, 1961, the Commission modified its order of September 29, 1961, by consolidating with the first two dockets an additional Docket RI62–100, which added 20 additional parties to the proceeding.

[5] Apparently the reasoning of the Commission in this case was that the increase while large in percentage did not raise the price above the ceiling price in the area for the gas involved in these proceedings. The Commission's position disposed of the contentions made by the Municipal Group concerning rate level by eliminating without hearing that issue in this proceeding.

The issue of the lawfulness of Respondents' separate rate increase filings is a matter of concern to Cities because such separate filings, if permitted to stand, create serious administrative and economic burdens for such company in the implementation of its contract, and will undoubtedly add to the legal complexities in the resolution of any future Section 4(e) rate or Section 7 cases which may be initiated by any additional filings for rate increases or other purposes in the future. Further, the multiplicity of the filings by these Respondents creates additional burdens on the Commission in that it adds to the latter's administrative problems and further tends to complicate its already heavy load in the processing of rate cases. In this connection, the Examiner is taking official notice of the fact that between June 12 and August 27, 1962, at least 12 of the Respondents filed additional supplements to their rate schedule filings seeking an increase in rate level to 14.5 cents per Mcf; that this latest round of increased rates was suspended by the Commission; and that certain of these increased rates are being collected subject to refund. Presumably the latest rate increase filings will be set down for hearing either as individual rate cases or as part of an area rate proceeding. In either event the multiplicity of the filings only serve to make the burdens of Cities and the Commission more onerous than necessary in the processing of its case load.

It should be apparent that the mutiplicity of rate filings by the individual Respondents, all of whom have different rate bases and different costs of service, will in any rate cases to be tried in the future as a result of these filings present greater burdens on Cities and on the Commission than a single filing made by Pan American, the only signatory operator. Because of the specific and express limitations on the right to file contained in Section 154.91 of the Commission's regulations, Cities urged that Supplement No. 88 to Pan American's FPC Gas Rate Schedule No. 84 be determined to cover all of the interests of the Respondents; that the certificates of public convenience and necessity, rate schedules, and all filings pertaining thereto of Respondents other than Pan American involved in this proceeding be vacated, rejected, and cancelled; and that Cities be authorized to pay Pan American 10.7195 cents per Mcf effective June 24, 1961, for all gas delivered under the Cities-Pan American contract.*

Under Cities' interpretation of its contract rights and under its interpretation of the Commission's Regulations, only Pan American had the right to file under Section 154.91 of the Commission's Regulations. On this basis the number of rate and other proceedings which it and the Commission could be compelled to engage in at any one time insofar as the production in the Kansas-Hugoton Field from the wells involved here was concerned would automatically be reduced to one, *i.e.*, the only rate or certificate case which should or could be processed would be initiated by a single filing which Pan American would file for itself and all assignees. In this connection, it should be observed that even the trial of one producer rate case presents complexities of a substantial nature and the proliferation of the rate filings would compound the complexities by the substantial additional number of dockets involved in the multiple filings made here even in a situation where the rate proceedings of the individual Respondents were consolidated for hearing. It may also be observed that all of the most recent rate increase filings were at the same rate level (which may or may not be the case in the future). It should be understood, in this connection, that each of the Respondents undoubtedly has a different rate base and would necessarily have a different cost of service.

* The 10.7195 cents per Mcf price has relationship only to the dockets involved in this proceeding and not to the subsequent Section 4(e) filings of which the Examiner has taken official notice.

Cities claims that if the challenged filings are permitted to stand it will be deprived of material benefits under its contract with Pan American and that it will be deprived of rights which it has under Section 154.91 of the Commission's Regulations. Cities further claims that neither the statute nor the Regulations nor past Commission precedents in litigated proceedings interposes obligations of the onerous character of those sought to be imposed upon it by permitting the multiple filings made by Respondents to stand.

As against Cities' position, the claim of Pan American and other respondents is that it is uncontradicted that they are the actual operators of the leases from which the gas is produced, and that Pan American had the right to make arrangements for "farm-outs", and to make assignments of leases. Apparently the respondents' thought is that unless individual filings are authorized they will not be able to obtain adequate protection for their economic interests.

The Respondents claim that because they are assignees and operators they thereby acquired "signatory" status under Section 154.91 of the Commission's Regulations, even though in fact none of the assignees is a signatory party to a contract with the buyer, and even though there is no language in the Commission's Regulations which provides for the conferring of "signatory" status on any nonsignatory person. In fact Section 154.91 makes no reference to filings by assignees who are not signatory powers. At the time of the adoption of Section 154.91 the Commission was well aware of the existence of assignments. Accordingly, omission of filing rights for asignees was deliberate. The respondents, however, rely as legal precedent for their position upon a series of noncontested shortened procedure cases where the Commission issued certificates to operators who were assignees but were nonsignatories. In addition they rely upon letters addressed to them and other persons by the Secretary of the Commission accepting rate and other filings by assignees who were nonsignatories.

It cannot reasonably be assumed that the Commission was unaware of the Secretary's letters or its own certificate orders in the uncontested cases when it set this case down for hearing.

Insofar as the certificates issued in the noncontested shortened procedure cases are concerned, it should be observed that the issue of the lawfulness of the filings was never raised in any of the proceedings relied upon by the respondents and that this proceeding was set down by the Commission for the specific purpose of considering and determining such issue. Neither the noncontested shortened procedure cases cited in Respondents' briefs at great length (as if they contained language indicating that the problems at issue here were actually raised and decided) nor the Secretary's letters can be said to be determinative of this issue. If they were actually determinative or conclusive as to the issues raised here, there would have been no reason for the Commission to have set this case down for formal hearing.

It may also be observed that Cities is not taking any position to the effect that Pan American did not have the right to make arrangements for "farm-outs" with the other Respondents or that Pan American did not have the right to make assignments of leases, or that the Respondents were not the actual operators of the leases from which the gas is being produced. Moreover, Cities is not taking a position that Pan American may not lawfully continue to make "farm-out" arrangements or to execute assignments. Those rights are not in issue. The issue raised by Cities is confined narrowly to the question of the standing of the nonsignatory Respondents to make individual filings under Section 154.91 of the Commission's Regulations.

According to the respondents' theory, each assignee has a right under Section 154.91 of the Commission's Regulations to file separately for rate increases and

for other purposes. It follows from that contention that Cities may be required if the traditional rate base procedure is pursued, to engage in as many separate and different rate proceedings as there are assignees who choose to make filings and that such proceedings may be brought at various times of the assignees' choosing, *i.e.*, the time will depend on when or whether an individual assignee determines to make a filing for higher rates.

It may be observed in this connection that if the Commission were to determine the rates of these producer operators on some regulatory approach other than the traditional rate base approach it would be wholly improbable that it would fix a different rate for each respondent producing the gas being sold to Cities, or that it would authorize the numerous assignees to receive different or higher rates than Pan American, the signatory party to the contract with Cities, would receive. From any rational or practical point of view, it would not serve any useful purpose to have filings by any party other than Pan American for rate level or certificate purposes. It is also unreasonable to assume that if rates are to be passed upon in connection with any Section 4(e) filings that it would serve the public interest or be consistent with Cities' rights under its contract to require rates to be determined on some cost basis other than the costs of Pan American, the person with whom Cities executed a contract. In addition, it would make very little sense to determine a rate level which would reflect an average cost of all different assignees.

The contentions of the parties may be discussed on two principal bases—one dealing with the meaning and significance to be accorded to the language of Section 154.91 of the Commission's Regulations, and a second basis dealing with the provisions of the contract between Pan American and Cities, the relationship of the respondents under such contract to each other and to Cities, and the operations of the parties under the contract, including the accounting and legal problems related to such operations.

The meaning to be accorded and the contentions of the parties concerning Section 154.91 will be discussed at this point.

The validity of the Respondents' claims that each of them obtained "signatory" status under the Commission's Regulations depend on the meaning to be accorded to the language of Section 154.91. That section provides in pertinent part as follows:

> (b) *Filings by operators signatory to a gas sales Contract.* (1) *Where the operator* (i) *of a natural gas producing property* (not a producer selling pursuant to a percentage formula under paragraph (e) of this section), or (ii) of a plant processing natural gas and located in or near the production area of the gas it processes *is a signatory party to a contract for the sale of the gas produced or processed, the operator shall make all the filings required under §§ 154.92 (rate schedules), 154.94 (changes in rate schedules), or 157.23 (applications for certificates) of all signatories for such sale, as well as for the sale and delivery (according to the terms of the contract) of the gas of non-signatory coowners.* Notwithstanding this requirement for filings by operators, a coowner who is a signatory party to a contract of sale of natural gas may, but he need not, make his own filings under §§ 154.92, 154.94, and 157.23 in addition to the filings required of the operators.
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> (c) *Filings by signatory coowners.* (1) Where gas is delivered by a well, unit, or plant operator under the terms of a contract of a sale of an owner or owners to which the operator is not a signatory party, each signatory owner is responsible for making the filings required by §§ 154.92 and

157.23 to cover the sale, but any such filings may be made and accepted to cover other coowners who are joint signatories to the sales contract. As a part of his application for a certificate of public convenience and necessity, such owner shall file a single statement setting forth: (i) the names of the coowners (signatory or nonsignatory) to whose accounts the gas so delivered is to be credited; (ii) the percentum of ownership of such owners in the well, unit, or plant; and (iii) a copy of the contract or contracts for the sale of gas in interstate commerce for resale. Also, such owner, either at the close of each calendar year or at the end of each 12-month period following the date of initial filing, shall submit a statement listing any changes in the ownership of working interests, producers, or plant ownership occurring subsequent to the filing of a prior statement hereunder.

(d) *No filings by nonsignatories.* Where, under paragraph (b) or (c) of this section, filings of rate schedules, rate changes, and certificate applications covering the sale are required of the operator or of the signatory owners, a nonsignatory coowner may not file rate schedules, rate changes, or certificate applications where his gas is being sold or delivered by the operator according to the terms of a contract to which the coowner is not a signatory party, whether or not the filings by operator or coowner as above required have been made. * * *" [Italics supplied except for italics of subheadings, the latter being italicized in the printed text of the Commission's regulations.]

Section 154.91 is a codification of Order No. 190 which was issued on September 27, 1956, 16 FPC 492. Section 154.91 was an amendment of the Commission's Order No. 174 series. The purpose of section 154.91 was to reduce the number of filings by independent producers permitted theretofore under prior orders of the Commission.

Section 154.91 provides for filings by a signatory operator, and a signatory co-owner and provides that there shall be no filings by nonsignatories. Section 154.91 does not provide for filings by any operator, it provides for filings by operators signatory to a gas sales contract. Section 154.91 contains no provision for filing by a nonsignatory, whether an operator or not.

It will be observed that the language employed in the headings of the various subsections of 154.91 are "(b) Filings by operators *signatory* to a gas sales contract"; "(c) Filings by *signatory* co-owners; and "(d) *No filings by non-signatories*". [Italics supplied.]

In each instance the Commission specifically emphasized in the subheading the necessity of being a signatory as a condition precedent for the right to file and this emphasis includes also the direct prohibition contained in subsection (d). The respondents with the exception of Pan American are not signatory co-owners, nor is anyone of them except Pan American a "signatory party to a contract for the sale of the gas produced". The repeated reference by the Commission in Section 154.91 to signatories in each one of the subsections pertinent to the issue here was hardly accidental. Further, it cannot rationally be assumed that at the time the Commission adopted Section 154.91 it was unaware of the usual industry arrangements referred to in this proceeding as "farmouts" in which the farmoutees became operators. The fact that the provisions authorizing filings in the case of operators was specifically limited to operators who were signatory parties to a contract of sale of natural gas appears to have been purposeful. The Commission's purpose was to reduce to the minimum, consistent with due process, the number of filings which could be made under its Order 174 series. In view of the Commission's onerous experience with the extremely large number of filings made under its prior Orders

174 (many of which experience proved to be unnecessary), it appears that the objective of the Commission was to reduce the number of filings compared to the number which had been made prior to the enactment of Order 190 and, thus, to achieve greater efficiency in its processes. The effect of permitting these multiple filings could only have the effect of nullifying the objective sought by the Commission in issuing Order 190.

The language of the Commission providing that filings were to be made only by an operator who "is a signatory party to a contract for the sale of the gas produced or processed" cannot reasonably be read to include all operators or all assignees but only those operators who were signatory parties to the contract.

The Commission had the power to authorize filings by persons who were not signatories but chose not to do so for the reason that such filings were unnecessary and would not serve a useful administrative or due process purpose.

While this case does not turn on filings by co-owners, subsection (c) of Section 154.91 reflects the Commission's emphasis on being a signatory party for filing purposes.

Subsection (d) is headed, "*No Filings by Nonsignatories*" and should be taken to mean what it says. Subsection (d) is tied specifically by the first clause of its first sentence to filings required of such persons as are described in subsection (b) *i.e.*, filings by operators *signatory* to a gas sales contract. Subsection (d) refers in its last clause, first sentence, to "the filings by operator . . . as above required. . . ." The reference in subsection (d) therefore is to the requirement of subsection (b) which limits the right to file to operators who are signatory parties to a contract of sale of natural gas.

Insofar as material to the determination of the issues in this case Section 154.91 contains two requirements governing filing rights and these requirements are in the conjunctive. To give rational meaning to the language employed by the Commission the requirements cannot he read in the disjunctive as contended here. The requirements are: (1) the filing person must be an operator or a signatory co-owner; and (2) the *operator must be a "signatory party to a contract for the sale of natural gas"*, *i.e.*, there shall be *no filings by nonsignatories* whether or not such person is an operator or an assignee of a signatory party who is an operator. The requirement is that the filing person be both an operator and a signatory. Meeting half of these requirements is inadequate to obtain filing rights.

There is no language in Section 154.91 from which it could even be implied that signatory status could be conferred upon a nonsignatory party. Moreover, there is no Commission history preceding the enactment from which an intention of this character could be imputed to the Commission in the adoption of Order 190. The purpose of Section 154.91 was to limit not increase the number of filings. This conclusion is buttressed by the Commission's decisions in *Humble Oil and Refining Co.*, 14 FPC 845; *Midstates Oil Corp., et al.*, 14 FPC 703; and *Hunt Oil Co.*, 16 FPC 1292.

Particularly pertinent to the claims made by the respondents here is the determination of the Court of Appeals for the Fifth Circuit in *Sun Oil Co.* v. *F.P.C.*, 256 F. 2d 233. In that case the Court at page 237 stated:

> On September 27, 1956, the Commission issued its Order 190, 18 C.F.R. §§ 154. 91, 157.23(c), which amended and supplemented Order 174–B. Among other things Order 190 provided that *operators who had signed contracts for the sale of gas produced or processed should make rate schedule filings with respect to such sales and should make applications for certificates*, that co-owners of the gas produced who had signed the sales contract may, but need not, make filings, and that co-owners who had not signed the sales contract may not file rate schedules. [Emphasis supplied]

It will be noted that the Court pointed out that under Order No. 190 the operators who had the right to file were those "who had signed contracts for the sale of gas produced or processed . . ." The following language beginning at page 239 of the Court's opinion is particularly pertinent to the issues here:

> The Commission, in its efforts to develop procedures and classifications which would permit it to process the volume of proceedings suddenly arising pursuant to the *Phillips* decision, moved from the *ad hoc* determinations in *Midstates* and *Humble* to its *Order 190 which codified the rule of single filings.* The action of the Commission in rescinding Sun's rate schedule filings was subsequent to the *Midstates'* determination but prior to the issuance of Order 190. However the Commission had given notice, on March 23, 1955, rescinding Sun's filings, that it proposed to make a rule to prohibit or restrict duplicate filings. The *ad hoc* process of development of administrative procedures is not an improper one. *American Power & Light Co.* v. *Securities and Exchange Commission*, 329 U.S. 90, 67 S. Ct. 133, 91 L. Ed. 103; *Securities and Exchange Commission* v. *Chenery Corporation*, 332 U.S. 194, 67 S. Ct. 1575, 91 L. Ed. 1995, rehearing denied 332 U.S. 783, 68 S. Ct. 26, 92 L. Ed. 367.
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> Sun, however, contends that where a formal rule has been promulgated, such as Order 174–B which permitted non-signing owners of gas interests to file rate schedules, the Commission could not, by an *ad hoc* order deprive it of that which the formal rule had given it, particularly where the order is entered without notice and without a hearing. But an administrative agency is not a slave of its rules. *National Labor Relations Board* v. *Grace Co.*, 8 Cir., 1950, 184 F. 2d 126. *Ad hoc* changes may be made and, in proper cases, may be applied retroactively. *National Labor Relations Board* v. *National Container Corp.*, 2 Cir., 1954, 211 F. 2d 525. In a particular case an administrative agency may relax or modify its procedural rules and its action in so doing will not be subjected to judicial interference in the absence of a showing of injury or substantial prejudice. *National Labor Relations Board* v. *Monsanto Chemical Co.*, 8 Cir., 1953, 205 F. 2d 763.
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> The effect of the Commission's orders of which Sun complains was substantially to reduce multiple rate filings by the elimination of filings by non-operators who had not signed the contract by which the gas, owned in part by them, was sold. Sun asserts that it has been deprived of rights of substance and that the deprivation has worked to its detriment and injury. The authorizing by it of the sale by an operator of its undivided share of gas does not, it contends, justify the Commission in denying Sun the right to make its own filings and initiate or resist proposed rate changes. It suggests that it would be harmed by the failure of its operator to file rate schedules or rate changes or by the untimely filings by the operator. Sun urges that its proper rate formulae and the elements of which they are comprised may be different from those of the operator. Sun assumes that it might not be notified by either the Commission or the operator of proceedings or proposals by which it might be adversely affected. It believes that if it had notice or knowledge of a proposal or proceeding by which it might be adversely affected, it might not be permitted to assert its rights and claims by being allowed to intervene. Sun takes the position that although the operating agreements give it the right to sever and take in kind its share of gas and to make separate sales of it, the Commission's recissions of its separate filings deprive it of this express contractual right. The ruling of the Commission requiring filings only by operators and permitting filings by other co-owners only if they were signers of sales contracts was a procedural ruling and it was no less so when the ruling, as to Sun, was made in specific orders re-

scinding its separate duplicate filings. It is not shown that the ruling has been or that it will be the means by which the substantial rights of the owners of gas, the sale of which is subject to regulations, will be adversely affected. We are unwilling to assume that the operators will advance their own interests to the prejudice of a non-operator co-owner. We do not believe that Sun will be without notice or knowledge of any proposed action which might affect its interests. We do not have any fear that the Commission will abuse its discretion by denying Sun the right to intervene in any proceeding where its rights of substance are involved and might be prejudiced if it were deprived of the right to participate. We cannot see that Sun is deprived of any contractual right reserved to it under the operating agreements.

Arguments made here by respondents that Pan American would not, or could not, properly protect their interests if filings under Section 154.91 were restricted to such company as the signatory party to the contract are entitled to no more weight than Sun's similar arguments in the Fifth Circuit in favor of multiple filings. That argument was not persuasive to the Fifth Circuit and the substantially similar argument made here by the respondents is also not persuasive. In this connection, it should be noted that the opportunity for assignees of Pan American to shift their interests from one nonsignatory operator to another nonsignatory operator in order to take advantage of the latter's rate base and operating costs if they should appear more advantageous for purposes of obtaining an increase in rate level should not be encouraged as they undoubtedly would be if respondents' claims that nonsignatory operators should be permitted to file were sustained.

The facts in this case indicate that the Commission acted wisely in adopting Order No. 190, and that no good purpose would be served by an interpretation of Order No. 190 which would frustrate the purposes of the Commission in adopting such order.

It is realized that there are a substantial number of filings made by nonsignatory parties in the Commission's files. Most of these filings of this character are a result of the Series 174 orders made prior to the enactment of Order No. 190 and a substantial number of filings are attributable to a misinterpretation of the Commission's filing requirements under Order No. 190. However, the fact that there are a large number of filings such as those made by the respondents should not concern the Commission as much as the continuance of a practice not authorized by the regulations and inconsistent with the efficient implementation of the authority vested in it by the Congress. The Commission has not hesitated to rescind filings improperly made in the past and should not hesitate to do so in this case. When certificate filings modifying certificates previously issued are made or when additional rate filings are made in cases like the present one the Commission at that time can rescind the unnecessary filings such as those made here. On the other hand, if filings such as those sought to be made here are permitted in the future (inconsistently with Section 154.91) the effect will be to increase the number of manhours of clerks, lawyers, engineers and others required to process these documents, and a further effect will be to increase the overall administrative burdens of the Commission itself.

Under the Commission's orders setting this matter down for hearing, the parties were directed to present evidence in support of their conflicting positions. While the witnesses for the respective parties gave "evidence" and argument in the guise of evidence in support of their positions and while the lawyers in extended argument during the course of the hearing made a considerable record, there was actually no testimony offered by any of the parties which reasonably could be said to show that under Section 154.91 the Commission intended to give

signatory status to persons who were not signatories.[7] In substance, the record is no more than an extended argument seeking a waiver of the express requirements of the Commission's filing regulations.

The regulations relied upon contain no such language as "signatory status" and the term is really no more than an attempt to explain the acceptance of filings not authorized under the Commission's regulations. The stress laid in the language employed in Section 154.91 upon the necessity of a party being a signatory, strongly leads to a conclusion directly opposite to that contended for by the respondents and the Staff. It is not within the authority of the examiner to grant waivers from the Commission's regulations, and on the merits of this case he would not even if he could.

While the Commission has issued certificates in noncontested shortened proceedings to nonsignatory parties, it has never issued any opinion in any case supporting respondents' contentions or articulating or expressing a view contrary to the specific language of Section 154.91.

If the Commission considered orders issued in its noncontested shortened procedure cases to constitute binding precedent in this situation, there would have been no reason to set this matter down for hearing. It may also be pointed out that the Commission has not hesitated in the past to rescind filings which it had erroneously accepted (*e.g.*, *Sun Oil Co.* v. *F.P.C.*, 256 F. 2d 233).

Instead of presenting testimony as to the purpose or intentions of the Commission in enacting Section 154.91, the testimony offered by the parties dealt almost entirely with the provisions of the contract between Pan American and Cities, the relationships and obligations of Cities and Pan American toward each other, and to the assignees and to the operating and accounting practices of Cities and Pan American in connection with the implementation of the basic contract of June 23, 1950. Evidence of this character was of little or no assistance in reaching a conclusion whether the Commission in adopting Section 154.91 intended to give signatory status to a party who was not a signatory. Whether the Commission intended to give signatory status to a person who was not a signatory, is a matter which cannot be made to depend on testimony as to the terms of a single contract executed in 1950 by Cities and Pan American, and evidence of the manner in which these signatory parties implemented their contract. Evidence of how one of the signatory parties developed contractual relationships with parties other than the signatory to the basic contract cannot, in the absence of a novation, be held to impose different or additional obligations on the other signatory party, *i.e.*, Cities.

Testimony as to the economic factors which motivated Pan American to make assignments or which motivated the assignees to accept them or which motivated assignees to assign part or all of their interests to others might well be matters for consideration by the Commission in determining whether to authorize or not to authorize nonsignatories to file, but such testimony is not supportive of a contention that the Commission intended in Section 154.91 to authorize or require nonsignatory parties to file. This is particularly so where the language of the regulation adopted is specifically to the contrary. It should also be observed that the Commission's right to limit the persons authorized to file has been sustained by the Courts.[8] Further, there is no reason to assume that such matters including the economic advantages or disadvantages

[7] The "conflict" as to the facts concerning the relationship between the parties and in regard to the implementation of the basic contract is more seeming than real, and the differences between the parties stem principally from different emphases put upon the facts rather than upon any conflict concerning the facts themselves.

[8] See *F.P.C.* v. *Sun Oil Company*, *supra*.

of authorizing or not authorizing nonsignatory filings were not matters adequately considered by the Commission when it adopted its Order 190.

It should be kept clearly in mind that the problem before the examiner is not to determine whether Section 154.91 should be amended so that signatory status could be conferred on a nonsignatory party but whether, in fact, the filings made by Pan American under Section 154.91 should be determined to cover all the interests of the assignees and whether the filings by the latter should be rejected and cancelled because they were not authorized under the regulation. Since the problem is essentially interpretative in character, testimony such as that offered in this proceeding was of little or no assistance.

Another difficulty in this case is that none of the testimony offered by any of the parties was relevant to the claim of the respondents that they had a right to file under Section 154.91. The fact that the Commission directed the respondents to submit evidence could not be taken as meaning that the respondents had a right to offer evidence which was not relevant to the problem to be resolved. At best, the only "testimony" offered here which could be said to have even a remote degree of relevancy consisted of arguments or reasons why a person who was a nonsignatory should be accorded the status of a signatory party.

In view of the fact that the Commission directed the parties to present evidence the testimony offered here will be summarized at this point.

The June 23, 1950 contract superseded an earlier contract relating only to lands in the Hugoton Field designated as Area "A". The 1950 contract expanded the earlier contract to include additional acreage designated by the parties as Areas "B" and "C". In 1950, the total area covered under the contract was approximately 600,000 acres. The leases on these acres were still only partially developed at the time the 1950 contract was executed.

The contract provided for the orderly drilling and development of this acreage by Pan American consistent with the growth and requirements of gas by Cities and the connection by Cities of a certain number of wells each year within the express limits of the expenditures required by Cities to make connections.

Subsequent to the execution of the 1950 contract Pan American made arrangements for drilling in the Kansas-Hugoton Field under "farmout" arrangements with various persons unrelated to Cities including the respondents named in the caption. In a substantial number of cases Pan American made assignments to persons who later assigned leases or interests in leases assigned to them. All assignments by Pan American were subject to the June 23, 1950 gas purchase contract with Cities. The record indicates that at the time of the hearing there were 976 wells subject to the June 23, 1950 contract. Pan American operated 724 of these wells, and the other 252 were operated by other producers. Of the 252 wells operated by others, in 239 of these wells the assignees owned interests stemming from assignments made by Pan American. Pan American has a working interest in some of the 252 wells operated by others. A witness for Pan American testified that there were approximately 170 assignments in the Kansas-Hugoton Field subject to the June 23, 1950 contract.

During the hearing it was developed that a "farmout" arrangement generally came into being for various reasons principally economic reasons. In various circumstances parties like Pan American would not develop parts of the acreage involved under a contract such as that with Cities but would decide instead to make assignments to others. In the circumstances of this case Pan American entered into a substantial number of separate arrangements with these respondents and others whereby the respondents and others became farmoutees and would drill wells on specified leases at their own expense. In return Pan

American would assign its interest in the lease or leases to the farmoutee. The farmoutee either became the operator or made an agreement with some other person to become the operator. Pan American generally reserved an overriding royalty which the assignee paid from the proceeds of the sale from the production of the assigned leases. In addition, in certain cases Pan American reserved the right and option to convert such overriding royalty to a working interest upon specified conditions. Where the option was exercised Pan American obtained a working interest, and where it was not exercised its position was that of an overriding royalty owner.

In substance what occurred was that the farmoutee or assignee, as he has been referred to in this proceeding, *i.e.*, a person not a signatory party to the basic contract and not privy to such contract, filed under Section 154.91 as though he were a signatory party. He thereafter obtained certificates of public convenience and necessity issued by the Commission in various uncontested proceedings. The basis upon which such persons received their certificates was that although they were not signatories to the contract, they somehow received signatory status. In substance, the only explanation for the conclusion that they should be considered in the same category and have the same rights as signatories, was that they were assignees. It would seem clear that if the Commission intended that nonsignatory operators who were assignees were to be required or permitted to file the Commission would have said so in Section 154.91. The fact is that the Commission said just the opposite.

Despite the fact that wells have been drilled by various assignees Pan American alone from the beginning of the contract has always advised Cities as to the wells to be connected, and Pan American alone retained complete control over the development and connection schedule. Cities does not now and has never looked to any of the assignees with regard to the development of the leases and the connection of the wells, but only to the party with whom it contracted, *i.e.*, Pan American.

An important provision of the 1950 contract between Pan American and Cities Service is contained in Article IV which provided, among other things, that Pan American dedicated to the fulfillment and performance of the agreement all of the dedicated reserves together with all commercial gas wells drilled thereon. The seller (Pan American) agreed to maintain at its own cost and expense the dedicated reserves and substitutions therefor in full force and effect. The seller had a right to substitute acreage of equal value and extent for a like amount of acreage from time to time. This right, however, was made subject to a number of conditions. Among these were that the seller (1) had to obtain the written approval of the buyer, *i.e.*, Cities, to such substitutions; (2) any acreage substituted shall upon substitution immediately be dedicated in the same manner and (3) Pan American would have the right without the consent of Cities Service to rearrange and adjust acreage comprising its existing and future production units.

An important clause in the contract under Article IV reads as follows:

> 3. Seller [Pan American] agrees that it shall endeavor in good faith to keep and maintain all of its leases on said lands covered by Exhibit "A" in full force and effect. If at any time Seller deems any of its leases or any part thereof to be condemned and no longer of any value or undesirable for it to keep or develop, it shall tender to Buyer [Cities Service] . . . an assignment of such lease or leases or portions thereof which Seller wishes to surrender * * *.

Cities has looked to Pan American to perform these duties and obligations. and is not obligated to look elsewhere.

The contract between Cities Service and Pan American provided, among other things, that Cities Service

> shall insofar as possible purchase and take from each well covered hereby natural gas ratably with its takes of natural gas from all other wells in the Kansas-Hugoton Field . . . or if it is not possible so to do then in any event buyer (Cities) shall purchase and take from the acreage covered hereby an aggregate quantity of natural gas from all other acreage in the Kansas-Hugoton Field for such markets. . . . If during the year preceding any January 22 Buyer has taken less or more than Seller's ratable share of Buyer's market, and within twelve (12) months thereafter has been unable to bring such ratable takes in balance, then Buyer shall pay for deficiencies in takes within thirty (30) days thereafter . . .

Article IX, Section 4, of the basic contract provides, among other things, that

> 4. If during any fiscal accounting month as herein defined the average gross heating value of the gas delivered by Seller from either the acreage designated as Area "C" on Exhibit "A" or the composite stream from the acreage designated as Areas "A" and "B" on Exhibit "A" shall fall below 900 BTU's per cubic foot, then the price applicable hereunder to be paid by Buyer to Seller for gas delivered during such month from said Area "C" or said Areas "A" and "B" shall be decreased proportionately to the deficiency in gross heating value below 900 BTU's per cubic foot; provided, however, if during any fiscal accounting month, as herein defined, the average gross heating value of the composite stream of the gas delivered by Seller from said Areas "A" and "B" shall fall below 925 BTU's per cubic foot, as the result of the processing of such gas by Seller, then the price applicable hereunder to be paid by Buyer to Seller for such gas delivered during such month shall be decreased proportionately to the deficiency in gross heating value below 925 BTU's per cubic foot.

The obligations referred to hereinabove have been performed by Cities with reference to the whole of the gas volumes produced from the acreage covered by the contract, and the credible testimony is that these obligations of Cities Service cannot be performed on less than the entire amount of gas involved under the basic contract.

The testimony as to the way in which the contract operates is as follows: Cities Service owns and operates a gas gathering system in each of the three areas covered by the contract. Cities Service gathers and meters the gas at or near the wellhead of each well drilled on the acreage. Gas produced from the "A" and "B" acreage is transported by Cities to the Ulysses Gas Plant owned by Pan American which processes the gas. As we have noted, a provision of the basic contract sets forth that the average gross heating value of the component stream of the gas delivered by Pan American from areas "A" and "B" shall not fall below 925 Btu's per cubic foot as a result of the processing of such gas by Pan American. In the event that it falls below 925 Btu's, the price for the gas is to be decreased proportionately.

The gas produced from the "C" acreage is not processed but is subject to a Btu adjustment if the gross heating value falls below 900 Btu per cubic foot. Up to the present time there has been no Btu deficiency in the composite stream produced from the "A" and "B" acreage. The volumes produced from areas "A" and "B" are treated separately by Cities in its accounting from the volumes produced from the "C" acreage, since the gas produced from the "C" acreage requires a Btu adjustment. The adjustment for each well in the "C" acreage is made by applying the Btu correction factor to the composite volume of gas produced from such areas and not on the basis of the volume attributed to the

wells of any assignee. There has been a Btu correction applied almost every month to the gas coming from the "C" acreage.

Cities makes only one check out for the gas produced from all of the acreage payable to Pan American, does not consider itself responsible for the distribution of the amount it sends to Pan American, and the latter makes distribution to the various assignees or other parties having interests in the Hugoton Field in accordance with their appropriate share. Cities determines the amount of gas it has received from the "A" and "B" acreage and multiplies the volume produced by the price less appropriate adjustments and deductions and, after applying the Btu factor to the "C" acreage, it multiplies the volume by the price. Cities then makes out one check to Pan American for the entire amount due for the total volumes received from areas "A", "B" and "C". This practice has never been deviated from, despite the assignments which have been filed in these proceedings.

After Pan American obtains its check from Cities Service, Pan American calculates and disburses to its royalty owners, overriding royalty owners, and to its "assignees" their share of the proceeds and retains its own share of the proceeds obtained from Cities. Any adjustments in the monthly check sent Pan American by Cities have been resolved by Pan American without discussion or negotiation by Cities with any of the assignees. Pan American has warranted to Cities that it had title to the gas received by Cities and that the amount of money paid by Cities was correct, except where the amount was adjusted. Pan American has a working interest in 759 wells subject to the contract, and these working interests held by Pan American include working interests in some of the 252 wells operated by others.

Pan American states that it delivered 168 separate assignments. Such assigned interests have been reassigned to approximately 140 other parties. Pan American excepted and reserved in 164 of such assignments an overriding royalty interest, and in 119 of the instruments Pan American reserved a right and option to convert such overriding royalty interest into a 50% interest in the assignee's working interest, upon the assignee receiving a specified aggregate gross sum of money from the sale of the gas production from the well.

All of the assignments were made subject to the basic June 23, 1950, contract between Pan American and Cities Service.

This contract is and has from its execution been administered as a single indivisible contract. To administer it in any other way would do violence to the contract terms and provisions. In this connection, the following considerations must be kept in mind:

Cities must perform its take-or-pay for obligations under the contract with reference to the whole of the gas purchased from the acreage covered by the contract. Even though each assignee has his own rate schedule on file with the Commission, the take-or-pay for operations cannot be performed on less than the whole of the gas.

Even though each assignee has his own rate schedule covering a part of the gas sold under the 1950 contract, the Btu adjustment under the contract must always be made on the basis of the whole volume of gas covered by the contract.

The principal reasons why Pan American and the other respondents claim they should have the right to file separately are that:

(1) the Commission has consistently permitted such filings to be made in the past.

(2) It is common practice in the industry to assign leases and to receive assignments of leases, particularly in the course of developmental drilling programs. Under the Commission's present procedures the actual and current

owner of the working interest or operator of the lease who is making the delivery of gas from that lease then has his own current certificate and current rate schedule and does not have to rely upon a filing by some disinterested party (apparently by disinterested party, the other respondents mean Pan American).

(3) The assignor does not know the details of the operation conducted by the assignee and is not usually the operator of the unit. Accordingly, the assignor is without the necessary information necessary for the person to file under FPC procedure and thus to protect his interests adequately.

(4) The alleged present "practice of putting the filing burdens on the current owner of the working interests is consistent with the practices of other regulatory bodies, including the Kansas Corporation Commission."

"It is Pan American's position that it should not be required to file for these farmoutees; that each assignee, no matter how small his interest, is entitled to his own rate schedule; that each assignee may seek out and authorize, but not require, another assignee to file for him; that he may authorize an agent who is not a working interest under the other assignees' rate schedule if it later becomes unsatisfactory to him."

Cities Service is opposed to the filing procedure contended for by Pan American and the assignees involved in this proceeding for the following reasons:

(1) There are approximately 140 present working interests who have acquired their interests by farmout arrangements in acreage covered by the 1950 contract. If each of the approximately 140 present working interest owners should file his own rate schedule, it would substantially increase the number of rate schedule filings, certificate applications, rate change filings and rate cases. The number of applications and filings would increase as time goes on by reason of the increases in working interest owners due to further divisions of interest by way of assignments, inheritance, et cetera.

Pan American's suggested procedure would allow the shifting of interests of these working interest owners from rate schedule to rate schedule, depending upon whether the working interest owner is of the opinion that such shift would be beneficial to him. There would be great difficulty of ascertaining what interest fell under what rate schedule.

(2) If the practice advocated by Pan American were authorized, a great burden would be placed on the Commission, on Cities, and on Cities customers (if they wished to protect themselves from unjust and unreasonable rates) by requiring each of them to administer, inspect, and follow on a current basis each of these multiple rate filings.

(3) The administration of the rate schedules in the manner suggested by Pan American will require Cities to increase its personnel. Further, different rates may apply for each farmoutee owner requiring detailed accounting and consideration by Cities.

(4) As a matter of ordinary business prudence, Cities would be required to examine abstracts of title in order to determine whether the filing party is an owner and the extent of ownership of the gas covered under each particular rate schedule. A warranty to Cities of the title by Pan American is inadequate to assure Cities with regard to particular portions of gas covered by a particular rate schedule.

(5) The practice advocated by Pan American may lead to litigation with regard to payments by various parties with whom Cities has no privity of interest.

(6) The suggestion by Pan American that since assignments are on file with the Commission, there would be no necessity of examining title to the gas is without merit. In fact, rate schedules of a number of the farmoutees do not

reflect that their assignments are a part of their rate schedules. Further, such assignments only reflect the title to the gas on the day on which the assignment was effective.

(7) Cities should not be required to negotiate under the renegotiation clause of the contract with each assignee as to the price to be paid for gas covered by the contract. In this connection, Huber has on three occasions sought to negotiate separately with Cities Service with respect to gas produced from its farmed out wells. Cities has a right to negotiate solely with Pan American as to the price and should not be required to negotiate with Huber and a long list of other assignees.

(8) Cities is not required to and does not wish to deal with a large number of working interest owners as to disputes and claims under the contract. The right to do business with Pan American rather than these farmoutees, is a valuable property right to Cities. The provisions of the contracts regarding negotiation, payment, Btu adjustment, and take-or-pay for provisions, were never intended to apply, particularly to large numbers of contracting parties, Cities Service has obligations only to Pan American and not to the assignees.

Both the language of Section 154.91 and the operative facts relating to the Cities-Pan American contract reflect the conclusion that only Pan American should be permitted to file in this case under Section 154.91.

In these circumstances the examiner concludes and orders (1) that Supplement No. 88 to Pan American's FPC Gas Rate Schedule No. 84 be held to cover all interests of its assignees; (2) that the certificates of public convenience and necessity, rate schedules, and all filings pertaining thereto of all such assignees be vacated, rejected, and canceled; and (3) that Cities is authorized to pay Pan American 10.7195 cents per Mcf effective June 24, 1961, for all gas delivered under the Cities-Pan American contract insofar as the docket numbers in the above caption are concerned.

SAMUEL BINDER,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. G–1964

ORDER FIXING PROCEDURE ON REMAND

(Issued June 20, 1963)

On July 19, 1962, the United States Court of Appeals for the Fifth Circuit set aside the Commission's order of March 13, 1961, 25 FPC 955, which had directed Texas Eastern Transmission Corporation to make certain additional refunds pursuant to the Commission's order approving a settlement of the increased rate proceeding in Docket No. G–1964. *Texas Eastern Transmission Corp.* v. *FPC*, 306 F. 2d 345 (CA5). The Court, on April 22, 1963, denied a petition for rehearing of its decision filed by Manufacturers Light and Heat Company and Ohio Fuel Gas Company (the Columbia Companies). The Commission has now received the certified copy of the Judgment of the Court, issued as and for the mandate, which provides, in relevant part, as follows:

> It is now ordered, adjudged, and decreed by this Court that, except for the limited factor of interest, the letter order of the Commission in this cause be, and the same is hereby, reversed and that this cause be, and it is hereby, remanded to the Commission for such further and other proceedings as are consistent with the opinion of this Court.

In view of the protracted period over which the matters in issue in this case have remained unresolved, the Commission finds it appropriate to issue a procedural order setting in motion expeditiously the additional proceedings contemplated in the Opinion of the Court of Appeals. It seems likely that the record heretofore compiled will be adequate to permit disposition of the issues remaining on remand without further hearing. Accordingly, we shall require Texas Eastern and the Columbia Companies within fifteen days of the issuance of this order, to submit to the Commission the proposed findings and conclusions which, in their respective judgments, are necessary to bring this proceeding to a conclusion in conformity with the mandate of the Court and the requirements of the Natural Gas Act. Any other person who was originally a party to Docket No. G–1964 may, if it wishes, submit proposed findings and conclusions. In addition, the parties may accompany their submittals with memoranda in support thereof; and within 10 days of the date herein fixed for the filing of the foregoing documents, any party may file a reply to the proposals of any other party.

The parties are requested, in particular, to give consideration to the question of how the refund now owing to the Columbia Companies should be computed, in the light of the Court's Opinion, and more specifically, the next-to-last paragraph thereof. Do the Columbia Companies now have a right to receive tender of a sum computed on the same basis as the payments made by Texas Eastern in 1958 to all its other customers or, on the other hand, is Texas Eastern free to make such tender or not, as it now sees fit? In connection with the foregoing question, the parties are requested to advise the Commission whether, in their judgment, it would constitute an undue discrimination against the Columbia Companies within the meaning of Section 4(b) of the Natural Gas Act or would effect an unlawful rebate to the remaining customers, within Section 4(d), if Texas Eastern were now to pay the Columbia Companies a refund of any lesser amount than an equivalent of the amounts voluntarily paid by Texas Eastern in 1958 to all the other customers, prior to Commission approval.

The Commission orders:

Texas Eastern and the Columbia Companies shall, on or before July 8, 1963 file the proposed findings and conclusions which, in their respective judgments, are required to bring this proceeding to a conclusion in conformity with the mandate of the Court of Appeals and the provisions of the Natural Gas Act. All replies to the proposals of another party shall be filed on or before July 18, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP62–219

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 21, 1963)

On March 26, 1963, as supplemented on April 11, 17 and 22, 1963, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP62–219 an application to amend the Commission's order, issued February 5, 1963, 29 FPC 226, in the subject docket to the extent necessary to reflect any changes in the facilities heretofore authorized in said docket which resulted from the amendments of Appli-

cant's related gas purchase contracts,[3] all as more fully set forth in the application to amend, as supplemented.

The subject order issued a certificate of public convenience and necessity authorizing Applicant to construct and operate certain facilities to enable it to attach new supplies of natural gas. The estimated cost of the facilities as certificated was $13,101,300. As a result of revisions in the originally proposed producer prices of 17¢ which have now been reduced to 15¢ and changes in points of delivery of the gas, Applicant will be required to construct facilities in addition to those originally authorized. The estimated cost of these additional facilities is approximately $2,000,000.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on May 23, 1963 (28 F.R. 5173). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued February 5, 1963, in Docket No. CP62-219 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued February 5, 1963, in Docket No. CP62-219 be and the same is hereby amended to the extent necessary to reflect the changes in the facilities heretofore authorized by said order which resulted from the amendments of the producers contracts for the sale of gas to Applicant as hereinbefore described and as set forth in the subject application to amend, as supplemented.

(B) In all other respects said order shall remain in full force and effect.

[3] Said related gas purchase contracts are the subject of the producer proceedings in Docket No. CI62-1184, *et al.*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

FLORIDA GAS TRANSMISSION COMPANY,[1] DOCKET NO. CP61-302

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 21, 1963)

On May 29, 1961, as supplemented and amended on May 14, November 27, and December 3, 1962, and January 21, 1963, Coastal Transmission Corporation (Coastal) filed in Docket No. CP61-302 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas to Texas Eastern Transmission Corporation (Texas Eastern) on a short-term interruptible basis, all as more fully set forth in the application as supplemented.

After Coastal was issued its certificate of public convenience and necessity by the Commission in Docket No. G-9960 on December 28, 1956, the validity

[1] Coastal Transmission Corporation was the original applicant in this proceeding. On August 3, 1962, 28 FPC 279, the Commission authorized Florida Gas Transmission Company to merge Coastal Transmission Corporation and directed that the name of Florida Gas Transmission Company be substituted for that of Coastal Transmission Corporation in all pending proceedings.

of said certificate was questioned in the courts, and this action delayed the completion of Coastal's financing and construction program for more than a year. As a result of this delay, Applicant was required to make advance payments to a number of its producers for gas not taken, with such advance payments to be recouped out of production within a specified period of time following the actual commencement of deliveries. The application states that the total of such advance payments made by Coastal to various producers prior to the time that Coastal's pipeline system went into operation was about $2,652,000, that advance payments were made for 15,549,168 Mcf of gas, that Coastal has the privilege of recouping this gas within a three- to five-year period following the date that Coastal's pipeline system went into operation (June 1, 1959) by taking volumes of gas over and above the minimum daily quantities of gas that Coastal is obligated to purchase from the producers on an annual basis, and that as of January 1, 1961, approximtely 13,292,573 Mcf of the subject gas was still unrecouped.

The design of Florida Gas Transmission Company's (Florida) system is such as to prevent physical transportation and sale of the prepaid volumes as well as existent surplus supplies of gas. Therefore Florida has requested authorization to sell and deliver gas on a short-term interruptible basis to Texas Eastern through June 30, 1963, in the amount of 15,000 Mcf per day at a price of 14.5¢ per Mcf.

Applicant states that, absent this sale, it would have to forfeit approximately $539,000 in prepayments for gas that it would be unable to take. In contrast the apparent revenue deficiency that would be generated from the proposed sale would be approximately $78,000.

The deliveries are made at two existing points of interconnection between the systems in Matagorda and Brazoria Counties in Texas. These connections were originally built at a cost of $14,800 to enable Coastal to sell gas to Texas Eastern for use as compressor fuel. Such sales are no longer being made.

Florida was granted temporary authorization on June 29, 1961, and June 13, 1962, to make the subject sale and delivery to Texas Eastern. This temporary authorization was amended on February 28, 1963.

On August 20, 1962, the Public Service Commission of the State of New York (PSC) filed a notice of intervention herein. On May 13, 1963, PSC filed a notice of withdrawal of intervention.

Pursuant to due notice, a public hearing was held in Washington, D. C., on June 5, 1963, respecting the matters involved in and the issues presented by the application, as supplemented and amended, in this proceeding. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Florida Gas Transmission Company, a Delaware corporation having its principal place of business in Winter Park, Florida, is a "natural gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its opinion and order of December 28, 1956, in Docket Nos. G-9262 and G-9960 (16 FPC 118).

(2) The sale of natural gas and the operation of facilities hereinbefore described, as more fully described in the application, as supplemented and amended, in this proceeding, will be made in interstate commerce subject to the

jurisdiction of the Commission, and such sale and operation by Florida are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Florida is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The proposed sale of natural gas and operation of facilities are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The authorization hereinafter granted should terminate on June 30, 1963, and should limit the total volume of gas sold and delivered to Texas Eastern to 13,292,573 Mcf.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Florida's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(7) It is appropriate and in the public interest that the Commission reserve for future determination:

(a) The extent to which the gas prepayment position of Florida is affected by the contracts between Florida and its affiliated suppliers, and whether any changes in such contracts may be required in the public interest.

(b) The treatment for rate-making purposes which should be accorded the revenues resulting from such sales and the cost of the prepaid gas or any loss which might be recorded on the books as a result of making such sale.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Florida Gas Transmission Company to sell and deliver natural gas and to operate the necessary facilities therefor, as hereinbefore described and as more fully described in the application, as supplemented and amended, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder shall terminate on June 30, 1963, and the volume of gas sold thereunder shall be limited to 13,292,573 Mcf.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Florida's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such regulations.

(D) The Commission reserves for future determination:

(1) The extent to which the gas prepayment position of Florida is affected by the contracts between Florida and its affiliated suppliers, and whether any changes in such contracts may be required in the public interest.

(2) The treatment for rate-making purposes which should be accorded the revenues resulting from such sales and the cost of the prepaid gas or any loss which might be recorded on the books as a result of making such sale.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP63-281

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 21, 1963)

On April 11, 1963, Natural Gas Pipeline Company of America (Applicant), filed an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain replacement and additional facilities to improve service to its customers.

Applicant proposes to replace 6–12 inch pipelines crossing the Mississippi River near Muscatine, Iowa, with two 30-inch pipelines approximately 3500 feet in length. It further proposes to replace 7.22 miles of its 8-inch Grayslake Lateral with 16-inch pipeline, the 7.98 miles of 8-inch Rockford Lateral with 16-inch pipeline, the 3.03 miles of 4-inch DeKalb-Sycamore Lateral with 10-inch pipeline and to loop the 1.63 mile Geneseo Lateral with a 4-inch pipeline.

Applicant states that the six submerged 12-inch lines across the river which were installed in 1931 are so deteriorated as to require replacement and that enlargement of the lateral facilities, above-described are required to enable it to meet its present and future obligations to existing customers.

No change in the contract quantities, daily sales capacity of its transmission system, or rates is proposed.

The estimated cost of the proposed facilities, including salvage allowance, is $2,511,300 which cost will be met from short-term borrowing pending permanent financing.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 10, 1963 respecting the matters involved in and the issues presented by the application. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G-235 (3 FPC 830).

(2) The facilities hereinbefore described as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Natural Gas Pipe Line Company of America, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall complete the authorized facilities and place them in operation within 9 months from the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

SOUTH CAROLINA ELECTRIC & GAS COMPANY, DOCKET NO. E-6468

ORDER GRANTING STAY

(Issued June 21, 1963)

On June 14, 1963, South Carolina Electric & Gas Company (Company) filed a motion for stay of ordering paragraph (C) of the order issued March 28, 1963, 29 FPC 624, 631, in this proceeding. The Company requests that the requirement to make payment on or before June 26, 1963, be stayed until July 23, 1963, and if on or before that date the Company files a petition for court review of the Commission's order and Opinion No. 384 issued March 28, 1963, the requirement to make payment shall be further stayed until 14 days after final appellate disposition of the case, upon condition that interest at the rate of 6% per annum will be paid for the period beginning June 26, 1963, and running until the date of payment, on whatever amount may ultimately be required to be paid.

The Commission finds:

It is appropriate to carry out the provisions of the Federal Power Act to grant a stay as hereinafter provided.

The Commission orders:

The requirement of paragraph (C) of the Commission's order in its order and Opinion No. 384 issued March 28, 1963, in this proceeding that South Carolina Electric & Gas Company shall pay to the Federal Power Commission $158,545 within 90 days from the issuance of that opinion be and the same hereby is stayed for a period ending July 23, 1963, and if on or before July 23, 1963, the

Company files a petition for review of the Commission's aforesaid order of March 28, 1963, such stay shall continue until 14 days after the court in which such petition for review has been filed issues its mandate or certified copy of judgment in lieu of mandate, provided that interest at the rate of 6% per annum shall be paid for the period beginning June 26, 1963, and running until the date of payment, on whatever amount ultimately may be required to be paid.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP61-328

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 21, 1963)

On April 2, 1963, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP61-328 pursuant to Section 7(c) of the Natural Gas Act a petition to amend an order granting a certificate of public convenience and necessity issued in this docket on May 17, 1962, 27 FPC 992. Applicant requests the order be amended so as to authorize the construction and operation of only a portion of those pipeline facilities originally authorized, and as more fully set forth in the petition to amend.

The Commission authorized Applicant in the above-mentioned docket to construct and operate facilities for the purpose of receiving and transporting natural gas to be purchased by Applicant from certain independent producers in Blocks 129 and 131, Vermilion Area, Blocks 23 and 48, South Marsh Island Area, and Block 169, Ship Shoal Area, all offshore Louisiana. Included among these facilities were 33.0 miles of 12-inch transmission purchase lateral pipeline extending from Applicant's existing facilities in the Block 28 Field to the Block 169 Field, both in the Ship Shoal Area. Applicant now proposes to construct and operate in lieu of such lateral pipeline some 19.35 miles of 10-inch transmission purchase lateral pipeline extending from its existing facilities in the Block 87 Field to the Block 169 Field, both in the Ship Shoal Area.

Applicant's existing facilities in the Block 87 Field, where the proposed lateral will originate, connect with the nearby Block 72 Field which is a hub for a number of laterals extending generally eastward to other production in the Ship Shoal Area and the South Pelto Area, and also for a major 14-inch lateral pipeline carrying all production from that vicinity landward to the Block 28 Field. Due to a decline in potential from certain of the properties connected to these eastward laterals, the capacity of the major 14-inch lateral is not being fully utilized, and it has been found possible to route production to be purchased from the Block 169 Field through this line rather than directly to the Block 28 Field as presently authorized.

The total estimated direct cost of the proposed substitute facilities is $1,377,834. This, when compared with the total estimated direct cost of $3,130,763 for the facilities already authorized, represents a saving of $1,752,929.

Due notice of the filing of the motion to amend and opportunity for hearing thereon have been given by publication in the Federal Register on May 23, 1963 (28 F.R. 5176). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order, issued on May 17, 1962, in Docket No. CP61–328 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued May 17, 1962, in Docket No. CP61–328 be and the same is hereby amended by authorizing Transcontinental Gas Pipe Line Corporation to construct and operate offshore of Louisiana 19.35 miles of 10-inch transmission purchase lateral pipeline extending from Applicant's existing facilities in the Block 87 Field to the Block 169 Field, in lieu of the construction and operation of 33.0 miles of 12-inch transmission purchase lateral pipeline extending from Applicant's existing facilities in the Block 28 Field to the Block 169 Field as heretofore authorized by said order, all located in the Ship Shoal Area offshore of Louisiana, all as hereinbefore described and as set forth in the subject petition to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP63–263

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 21, 1963)

On March 22, 1963, Transcontinental Gas Pipe Line Corporation (Applicant) filed an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the 12 months period from May 22, 1963 to May 21, 1964, and the operation of field facilities to enable it to take into its certificated pipeline system natural gas purchased from independent producers located in the area of its system, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch when contracting for and connecting to its pipeline system new supplies of natural gas.

The total cost of all the proposed facilities will not exceed $2,000,000 during the period and no single project will exceed $500,000. The proposed facilities will be financed from cash on hand or through short term bank loans.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 12, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a natural-gas company, within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G–1143 (7 FPC 145).

(2) The facilities hereinbefore described as more fully described in the application in this proceeding, are proposed to be used in transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities to take natural gas purchased from producers thereof as proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization hereinafter granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization hereinafter granted, (d) location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(7) The authorization hereinafter granted should be limited to construction during the period from May 22, 1963 to May 21, 1964, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $2,000,000, with no single project to exceed a cost of $500,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Transcontinental Gas Pipe Line Corporation to construct during the 12 months from May 22, 1963 to May 21, 1964, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Transcontinental Gas Pipe Line Corporation.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the period stated, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $2,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION AND AMERICAN LOUISIANA PIPE LINE COMPANY, DOCKET NO. CP63-279

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 21, 1963)

On April 9, 1963, Transcontinental Gas Pipe Line Corporation (Transco) and American Louisiana Pipe Line Company (American Louisiana) filed in Docket No. CP63-279, their joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities to enable them to exchange natural gas during emergency conditions through the proposed interconnection to be located at the point of crossing of Transco's Central Louisiana Lateral with the 24-inch main line of American Louisiana in Section 37, Township 7 South, Range 1 West in Acadia Parish, Louisiana.

The facility will be used when either of the two companies is confronted with an emergency which may be alleviated by deliveries of natural gas to one by the other. Volumes of gas so delivered will be returned in kind by the party receiving it within sixty days.

The estimated total cost of the respective facilities to be constructed, operated and financed by both applicants severally is $25,980, which funds will come from cash on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 11, 1963, respecting the matters involved in and the issues presented by the application. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation of Houston, Texas and Applicant, American Louisiana Pipe Line Company of Detroit, Michigan, joint Applicants herein, are each a natural gas company, within the meaning of the Natural Gas Act, as heretofore found by the Commission as to Transco

in Docket No. G–1143 (7 FPC 145), and as to American Louisiana in Docket No. G–2306 (13 FPC 380), respectively.

(2) The facilities to be constructed as hereinbefore described, as more fully described in the application, will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicants are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicants are each able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by the Applicants are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon the Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued, upon the terms and conditions stated in paragraph (5) of the Commission's findings, authorizing Applicants, to construct and operate the proposed facilities as hereinbefore described, and as more fully described in the application.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP63–62

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 21, 1963)

On September 12, 1962, United Gas Pipe Line Company (Applicant) filed an application in Docket No. CP63–62 pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of the following:

> Approximately .0076 mile of 2" pipeline, a sales meter station and appurtenant facilities near Milepost 136.7 on Applicant's Benton Junction to Mobile Junction 16" pipeline, all in Section 7, Township 4 North, Range 9 West, Perry County, Mississippi;

all as more fully set forth in the application.

Applicant states that the facilities will be used for the sale and delivery of natural gas to the Town of Beaumont, Perry County, Mississippi, for resale through the proposed distribution system of said Town, as described in said application. Applicant states that the facilities will cost $6,508, and the third year maximum daily and annual deliveries will be 344 and 46,267 Mcf, respectively.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 11, 1963, respecting the matters involved in and the issues presented by

the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation with its principal place of business at Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation of said facilities by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) Construction and operation of the proposed facilities are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon the Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) Public convenience and necessity require that the certificate be conditioned upon the satisfactory completion of financing arrangements by the Town of Beaumont.

(7) Public convenience and necessity require that the certificate be conditioned upon the third year maximum daily deliveries in the proposed facilities not exceeding 344 Mcf.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, United Gas Pipe Line Company, to construct and operate the proposed facilities hereinbefore described, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The certificate issued in paragraph (A) above is further conditioned upon the Town of Beaumont's ability to satisfactorily complete the financing of its proposed gas distribution system within six months of the issuance of said certificate.

(D) The certificate in paragraph (A) above is further conditioned to limit maximum daily deliveries by Applicant to not more than 344 Mcf.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP63-231

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 24, 1963)

On February 18, 1963, as amended on March 25 and March 27, 1963, Florida Gas Transmission Company (Applicant) filed in Docket No. CP63-231 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the 12-month period commencing July 1, 1963, and the operation of gas purchase facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application, as amended.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $1,500,000 and no single project will exceed a cost of $300,000, said costs to be financed from short term bank loans.

Applicant has agreed to limit attachment of new supplies to an aggregate contract volume during the subject 12-month period of a maximum of 3,650,000 Mcf.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 12, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Florida Gas Transmission Company, a Delaware corporation having its principal place of business in Winter Park, Florida, is a "natural-gas company" within the meaning of the Natural Gas Act as successor to Houston Texas Gas and Oil Corporation as provided by order of the Commission in Docket No. G-9262, *et al.*, issued on April 18, 1962.

(2) The facilities hereinbefore described, as more fully described in the application, as amended, in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit, pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, on or before September 1,

1964, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects constructed pursuant to the authorization hereinafter granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate authorizations.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period commencing on July 1, 1963, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $1,500,000, with no single project to exceed a cost of $300,000.

(8) Applicant's total contract purchase obligation under this authorization should be limited to a maximum of 3,650,000 Mcf.

(9) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Florida Gas Transmission Company, to construct during the 12-month period commencing on July 1, 1963, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate authorizations.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the 12-month period commencing on July 1, 1963, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $1,500,000, with no single project to exceed a cost of $300,000.

(E) Applicant shall not incur total contract purchase obligations under this authorization in excess of 3,650,000 Mcf.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NEVADA IRRIGATION DISTRICT, PROJECT NO. 2266

ORDER ISSUING LICENSE (MAJOR)

(Issued June 24, 1963)

Application was filed on September 23, 1960, by Nevada Irrigation District (Applicant) of Grass Valley, California, for a license under the Federal Power Act (Act), for Project No. 2266, located on the Middle and South Yuba Rivers, Bear River, and Jackson and Canyon Creeks in Nevada, Placer and Sierra Counties, California, and affecting lands of the United States within the Tahoe National Forest and other lands of the United States.

Included among the project works for which Applicant seeks a 50-year license are certain existing project works for which a license was previously issued to Applicant on November 16, 1925, for major Project No. 338 for a period of 50 years. By application for amendment of that license received March 13, 1930, the Applicant requested that the major license be amended to become a minor part license, the reasons given in the application being that the Applicant was not, itself, developing hydroelectric power and that the government lands involved, which gave the Commission jurisdiction, constituted only 12.08% of the project lands. The project works which were licensed to the District in 1925 consisted of a series of dams and reservoirs connected either by natural streams or tunnels or conduits which combined to supply water first to the Spaulding Rim Power Plant of the Pacific Gas and Electric Company (PG&E). PG&E, after using the water through several power plants, then returned the water to the District for irrigation use. On the 13th day of November 1930, the Federal Power Commission amended the license for Project No. 338, pursuant to the provisions of Section 10(i) of the Federal Power Act, making the license one for a minor part of a project only and further restricted the license to cover such parts of the project works which occupied lands of the United States. It is proposed to surrender that license, which is still outstanding, in the event a license is issued for Project No. 2266.

The new project works for which the Applicant requests a 50-year license include an additional reservoir and expansion of one of the tunnels and replacement of one of the conduits in connection with its existing project works and in addition, another reservoir and two power houses unconnected with the existing project works. The new reservoir system as well as the old will deliver water to power houses of the PG&E Company which will again return the water to the District for irrigation use after its use for development of hydroelectric power by the Company.

In support of its request for a 50-year license, Applicant states that it is primarily interested in irrigation and needs additional storage to supplement the present water supply in the area. It proposes to finance the proposed new construction by the issuance of revenue bonds, to be underwritten on the strength of a long-term contract with Pacific Gas and Electric Company for the purchase, by PG&E, of the power to be generated by Project No. 2266, and for payment by PG&E for additional storage to be created by Project No. 2266 and supplied to PG&E for use by its proposed Project No. 2310.

On March 13, 1963, in Opinion No. 380, 29 FPC 468, concerning the proposed redevelopment of the licensed Holtwood hydroelectric project of Pennsylvania Power & Light Company, we stressed the strong intent of Congress that it have an opportunity to review the use of water resources by hydroelectric developments at

the end of the licensed term which in every case is limited to a maximum of 50 years. In that case, we refused to issue a new 50-year license for existing project works which the licensee planned to improve by deepening the tailrace, erecting flashboards and installing an additional turbine and generator at an overall estimated cost of approximately $9,000,000. Although we found that the redevelopment would make better use of the water resources involved and would therefore be in the public interest, we stated that we would not grant a new 50-year license in such a situation because it would deprive Congress of an opportunity to examine the use of the water resource at the end of the original license term and, if it wished, to take over the project under Section 14 of the Federal Power Act upon payment of net investment as there defined, but no more than fair value. A similar situation does not exist here.

While minor part licenses are also limited to maximum terms of 50 years, it was the consistent practice of the Commission to waive the "recapture" provisions of Section 14 in issuing such licenses. In this case, since the Applicant is a municipality, its project works would not be subject to such "recapture" in any event since Congress on August 15, 1953, exempted all municipal licensees from the "recapture" provisions of Section 14, 67 Stat. 587.

The Applicant's project is designed to provide water for irrigation. Our jurisdiction attaches because Government lands are necessary to the full development of the project, and the project will supply water for the development of hydroelectric power. The application has been referred to the Department of Agriculture and the Department of Interior as well as to other interested governmental agencies, and the departments concerned with the management of the United States resources involved have expressed no objection to the issuance of the requested license, while recommending certain conditions to protect the interests of the United States. The Department of Agriculture has entered into a "Memorandum of Understanding" with the Applicant which includes conditions for the protection of the National forest lands involved. In addition, Applicant has submitted a copy of an agreement dated March 13, 1962, between Applicant and the California Department of Fish and Game providing for releases of water from the various project reservoirs, minimum reservoir pools, minimum stream fluctuations and other measures to protect the interests of fish and wildlife.

We have considered whether or not to attempt to separately license the new separate reservoir and power houses and simply to amend the existing minor part license to include the other new reservoir and the improvements to existing project works. Examination of the economics of the project militates against such action. The storing and supplying of water for irrigation purposes is not generally a money-making proposition. This is certainly true in the present case. If it were not for the fact that PG&E has agreed to pay for the power generated by the project works and the water delivered from all project reservoirs on a long-term basis, the Applicant would be unable to proceed with the project, and in order to sell the water on a long-term basis the District requires the license period of 50 years. After examining all uses of the resources involved and recognizing the benefits to the region to be derived from the project from recreation, irrigation and other uses of the water resources, we believe that it will not be inconsistent with the public interest to issue a 50-year license covering all of the project works containing special conditions as suggested by the interested agencies. There is no alternative proposed use of the resources involved.

The new license will be made subject, among other things, to the conditions that Applicant surrender its license for Project No. 338, and that within one year from the date of issuance of this order, it file with the Commission its aforesaid agreement with PG&E, pursuant to Section 13.1 of our Rules and Regulations under the Federal Power Act.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, advised that the project would have no significant effect on navigation and special terms and conditions in the interest of navigation were not necessary. However, a special condition in the interest of flood control was recommended for inclusion in any license issued for the project.

Permission to intervene in this proceeding was granted to the California Department of Fish and Game and Pacific Gas and Electric Company by Commission orders issued January 24 and February 2, 1961, respectively.

The Commission finds:

(1) Applicant is a "municipality" as defined in the Federal Power Act, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license for the project.

(2) The project affects lands of the United States, but not a Government dam.

(3) Public notice of the filing of the application has been given as required by the Act. Petitions to intervene were received as recited above.

(4) The issuance of a license for the project as hereinafter provided will not interfere or be inconsistent with any reservation or with the purposes for which the Tahoe National Forest was created or acquired.

(5) The issuance of a license for the project will not affect the development of any water resources for public purposes which should be undertaken by the United States.

(6) The project is best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, under the terms and conditions hereinafter imposed.

(7) The installed horsepower capacity of the project for the purpose of computing the capacity component of the administrative annual charge is 78,000 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(8) The amount of annual charges to be paid under the license for the use, occupancy and enjoyment of its lands should be determined at a later date as hereinafter provided.

(9) The step-up transformer and switching facilities mentioned in paragraph (B) below, which were included in the application for license, are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(10) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Nevada Irrigation District (Licensee) under Section 4(e) of the Act for a period of 50 years, effective as of May 1, 1963, for the construction, operation and maintenance of Project No. 2266, located on Middle Yuba, South Yuba and Bear Rivers and Jackson and Canyon Creeks, affecting lands of the United States within the Tahoe National Forest and other lands of the United States, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has prescribed under the provisions of the Act.

(B) Project No. 2266 consists of:

(i) All lands constituting the project area and inclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purpose of the project, whether such lands or interest therein are owned or held by the licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: Sheets 1 and 2 (FPC Nos. 2266–5 and –90) General Plan of Project Area; and

Exhibit K: Detail Maps showing Topography and Project Area of Project Works.

Exhibit No.	FPC No.	Description
K-2	2266-7	Topography, Jackson Meadows Reservoir.
K-5	2266-8	Project Area, Milton Reservoir.
K-6	2265-9	Milton Pipe Line Reconstruction.
K-7	2266-10	Project Area, Milton-Bowman Conduit.
K-8	2266-11	Project Area, Jackson Lake.
K-9	2266-12	Project Area, French Lake Reservoir.
K-10	2266-13	Topography, Faucherie Reservoir.
K-11	2266-14	Project Area, Bowman Reservoir.
K-16	2266-15	Sheet 1, Bowman-Spaulding Conduit.
K-17	2266-16	Sheet 2, Bowman-Spaulding Conduit.
K-18	2266-17	Bowman-Spaulding Conduit, Diversion Works.
K-19	2266-18	Bowman-Spaulding Conduit.
K-22 to K-32 (inclusive)	2266-19 to -29 (inclusive)	Bowman-Spaulding Conduit.
K-33	2266-30	Rucker Creek Tunnel.
K-34	2266-31	Fuller Lake.
K-35 and K-36	2266-32 and -33	Bowman-Spaulding Conduit.
K-37	2266-34	Dutch Flat No. 2 Intake.
K-38 and K-39	2266-35 and -36	Dutch Flat No. 2 Flume.
K-40	2266-37	Dutch Flat No. 2 Forebay and Penstock.
K-42	2266-38	Dutch Flat No. 2 Afterbay.
K-43	2266-39	Chicago Park Flume.
K-44	2266-40	Chicago Park Forebay and Penstock.
K-47	2266-41	Sheet 1, Rollins Reservoir.
K-48	2266-42	Sheet 2, Rollins Reservoir.

(ii) Project works consisting of:

Jackson Meadows Storage Dam and Reservoir located on Middle Yuba River—comprised of a rock-fill dam with side channel gated spillway, a gated sluice outlet, a reservoir with normal water surface at elevation 6,032 feet and storage of 65,000 acre-feet;

Milton Diversion Dam and Reservoir (existing) located on Middle Yuba River—comprised of a concrete arch dam with overflow spillway section and a reservoir with water surface elevation at 5,690 feet and storage of 900 acre-feet;

Milton-Bowman. Pipeline and Tunnel (existing)—the wood stave pipeline portion of this conduit is to be replaced with concrete pipe and the tunnel portion repaired;

Jackson Lake Dam and Reservoir (existing) located on Jackson Creek—comprised of rockfill dam with side channel spillway, a gated sluice outlet, and a reservoir with water surface elevation at 6,594 feet and storage of 1,300 acre-feet;

French Lake Dam and Reservoir (existing) located on Canyon Creek—comprised of a rockfill dam with concrete face, with side channel spillway, a gated sluice outlet, and a reservoir with water surface elevation at 6660.5 feet and storage of 13,840 acre-feet;

Faucherie Lake Dam and Reservoir (existing) located on Canyon Creek—comprised of a rockfill dam to be raised 10 feet with side channel spillway, a

gated sluice outlet, an earth dike and a reservoir with water surface elevation at 6,153 feet and storage of 3,500 acre-feet;

Bowman Dams and Reservoir (existing) located on Canyon Creek—comprised of a rockfill dam with concrete face and gated sluice outlet, a concrete arch dam with gated spillway section, a reservoir with water surface elevation at 5562 feet and storage of 63,325 acre-feet;

Bowman-Spaulding Conduit (existing)—comprised of canal, flume and tunnel sections, portions of which are to be repaired or replaced;

Dutch Flat No. 2 located on Bear River—comprised of an intake located above Drum Afterbay Dam (PG&E Co.), a conduit to a small forebay, a penstock, a powerhouse with a 32,000-horsepower turbine connected to a 22,800-KW generator installed therein, a step-up transformer, a switching structure and an afterbay dam;

Chicago Park located on Bear River—comprised of an intake located above Dutch Flat No. 2 afterbay dam, a concrete flume to a small forebay, a penstock, a powerhouse with a 49,300-horsepower turbine connected to a 36,300-KW generator, a step-up transformer and a switching structure;

Rollins Storage Dam and Reservoir located on Bear River—comprised of a rockfill dam with side channel gated spillway, a gated outlet through the left abutment, a reservoir with water surface elevation at 2,170 feet and storage of 60,000 acre-feet; and appurtenant facilities; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit: General Design Drawings.

Exhibit No.	FPC No. 2266	Description
L-2	-44	Jackson Meadows Dam.
L-4	-46	Jackson Meadows Diversion and Unwatering.
L-5	-47	Milton Diversion Dam.
L-6	-48	Milton Pipe Line Reconstruction.
L-7	-49	Milton Diversion Ditches.
L-8	-50	Jackson Lake Dam.
L-9	-51	Alterations to French Lake Dam.
L-10	-52	Faucherie Reservoir and Dam.
L-11	-53	Bowman Dam—General Plan.
L-12	-54	Bowman Dams—Details.
L-13	-55	Bowman Dam Outlet Works.
L-14	-56	South Arch Dam, General Plans (Bowman).
L-15	-57	South Arch Dam, Abutment and Spillway (Bowman).
L-16	-58	Bowman-Spaulding Conduit Sheet 1.
L-17	-59	Bowman-Spaulding Conduit Sheet 2.
L-18	-60	Bowman-Spaulding Conduit-Diversion Works.
L-22	-62	Bowman-Spaulding Conduit.
L-24	-64	Bowman-Spaulding Conduit.
L-25	-65	Bowman-Spaulding Conduit.
L-26	-66	Bowman-Spaulding Conduit Clear Creek Tunnel.
L-27	-67	Bowman-Spaulding Conduit.
L-28	-68	Bowman-Spaulding Conduit.
L-29	-69	Bowman-Spaulding Conduit.
L-30	-70	Bowman-Spaulding Conduit.
L-31	-71	Bowman-Spaulding Conduit.
L-32	-72	Bowman-Spaulding Conduit.
L-33	-73	Rucker Creek Tunnel.
L-34	-74	Fuller Lake.
L-35	-75	Bowman-Spaulding Conduit.
L-36	-76	Bowman-Spaulding Conduit.
L-37	-77	Dutch Flat No. 2 Intake.
L-38	-78	Dutch Flat No. 2 Flume Sheet 1.
L-39	-79	Dutch Flat No. 2 Flume Sheet 2.
L-40	-80	Dutch Flat No. 2 Forebay and Penstock.
L-41	-81	Dutch Flat No. 2 Powerhouse.
L-42	-82	Dutch Flat No. 2 Afterbay Dam.
L-43	-83	Chicago Park Flume.
L-44	-84	Chicago Park Forebay and Penstock.
L-45	-85	Chicago Park Powerhouse.
L-47	-87	Rollins Dam.
L-49	-89	Rollins Diversion and Unwatering Sections and Details.

Exhibit M: Five typewritten pages, entitled "General Description of Equipment" filed in the Commission September 23, 1960.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or apropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-2, December 15, 1953, entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Lands of the United States" (17 FPC 62), which terms and conditions, designated as Articles 1 through 24, are attached hereto and made a part hereof, except for Articles 12, 13, 17, 20 and 21 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 25. The Licensee shall commence construction of the proposed project works within one year of the effective date of this license, shall thereafter in good faith and with due diligence prosecute such construction, and shall complete construction of such project works within four years from the effective date of this license.

Article 26. The Licensee shall within one year from the date of completion of the project, file with the Commission revised Exhibits F and K to define the final project boundary in accordance with the rules and regulations of the Commission.

Article 27. The Licensee shall construct, maintain, and operate such protective devices and shall comply with such reasonable modifications of the project structures and operation in the interest of fish and wildlife resources, provided that such modifications shall be reasonably consistent with the primary purpose of the project, as may be prescribed hereafter by the Commission upon its own motion or upon recommendation of the Secretary of the Interior or the California Department of Fish and Game after notice and opportunity for hearing and upon a finding that such modifications are necessary and desirable and consistent with the provisions of the Act: *Provided further,* That subsequent to approval of the final design drawings prior to commencement of construction no modifications of project structures in the interest of fish and wildlife resources which involve a change in the location, height, or main structure of a dam, or the addition of or changes in outlets at or through a dam, or a major change in generating units, or a rearrangement or relocation of a powerhouse, or major changes in spillway structure shall be required.

Article 28. Whenever the United States shall desire, in connection with the project, to construct fish handling facilities or to improve the existing fish handling facilities at its expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such fish handling facilities or such improvements thereof. In addition, after notice and opportunity for hearing the Licensee shall modify the project operation as may be prescribed by the Commission, consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish handling facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish handling facilities or to relieve the Licensee of any obligation under this license.

Article 29. The Licensee shall maintain the following minimum pools in the Jackson Meadows Reservoir:

	Acre-feet
(i) Normal or wet years:	
(a) June 1 through Sept. 30	21,000
(b) Oct. 1 through May 31	10,000
(ii) Dry years:	
(a) June 1 through Sept. 30	21,000
(b) Oct. 1 through May 31	3,000

A dry year is one in which the April–July run-off forecast made by the California Department of Water Resources on May 1 for the Bowman area—Middle Yuba River and Canyon Creek is for less than 70,000 acre-feet.

Article 30. The Licensee shall maintain a normal pool in Milton Reservoir at an elevation of 5,686 feet year around except when repair to the Milton Bowman Tunnel is necessary at which time the normal pool may be drawn to a minimum elevation of 5,678 feet.

Article 31. The Licensee shall maintain a minimum pool in Rollins Reservoir at all times of not less than 5,000 acre-feet.

Article 32. The Licensee shall maintain minimum releases for maintenances of fish life below the various reservoirs in accordance with the following schedule:

From—	To—	Release CFS	Period
Jackson Meadows	Middle Yuba River	5	Continuous.
Milton Diversion	Middle Yuba River	3	Continuous.
Jackson Lake	Jackson Creek	1.5	Continuous.
French Lake	Canyon Creek to Bowman Reservoir	2.5	Continuous.
Bowman-Spaulding Canal	Canyon Creek	3	4/1 to 10/31.
		2	11/1 to 3/31.
Dutch Flat Afterbay	Bear River	10	5/1 to 10/31.
		8	11/1 to 4/30.

Article 33. The Licensee shall maintain minimum releases for maintenance of fish life below Rollins Reservoir into Bear River in accordance with the following schedule:

	Cfs
(i) Normal water conditions:	
(a) May 1 through October 31	75
(b) November 1 through April 30	20
(ii) Less than normal water conditions:	
(a) May 1 through October 31	40
(b) November 1 through April 30	15

Releases to be measured at the Colfax-Grass Valley USGS gage.

Normal water conditions are defined as follows: Water conditions which shall be deemed to prevail any month of the year if the water supply indicator for that month equals or exceeds the following:

	Inches		*Inches*
November 1	1	May 1	36
December 1	7	June 1	40
January 1	12	July 1	42
February 1	20	August 1	42
March 1	26	September 1	43
April 1	34	October 1	44

Water Supply Indicator: The indicator of any calendar month shall be the total precipitation of inches of water as measured in reasonable accordance with the accepted practices of the United States Weather Bureau at

the existing Lake Spaulding Gage for the period from October 1 up to the beginning of the month in question.

Article 34. The Licensee shall not change the flow releases nor cause vertical fluctuations in the stream levels below Jackson Meadows Dam and Rollins Dam greater than one foot in 6 hours or 3 inches during any one hour. Fluctuations in stream levels shall be measured within one-half mile downstream from Jackson Meadows Dam and at the Colfax-Grass Valley Gage downstream from Rollins Dam.

Article 35. The Licensee shall cooperate with the United States Forest Service, the California Department of Fish and Game, and the Bureau of Sports Fisheries and Wildlife in planning the location of deer-proof fences, crosswalks (covered with 4 inches of soil), escape ramps, and such other reasonable structures which may be found necessary to protect deer in the project area, and to construct such facilities as may hereafter be prescribed by the Commission.

Article 36. The Licensee shall take whatever precautions are necessary during construction operations to prevent the entry into project streams of silt, clay, sand, gravel, detritus or other material which is injurious to fish and wildlife or their habitat.

Article 37. The Licensee shall keep ground disturbance to the minimum necessary for construction of the project and shall revegetate or use other control measures to reduce erosion when deemed necessary by the Forest Service on lands within the Tahoe National Forest.

Article 38. Timber on lands of the United States cut, or destroyed in the construction and maintenance of the project works, or in the clearing of said lands, shall be paid for and the resulting slash and debris disposed of in accordance with the requirement of the agency of the United States having jurisdiction over said lands. Payment for merchantable timber will be at current stumpage rates, and payment for young growth timber below merchantable size will be at current damage appraisal value. However, the agency of the United States having jurisdiction may sell or dispose of the merchantable timber to others than the Licensee, with the provision that timber so sold or disposed of will be cut and removed from the area prior to or without undue intereference with clearing operations of the Licensee and in coordination with his project construction schedules. Such sale or disposal of others will not relieve the Licensee of the responsibility for the clearing and disposing of all slash and debris from project lands.

Article 39. The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned to prevent, make advance preparations for suppression, and suppress fires on the lands to be occupied or used under the license. The Licensee shall be liable for and pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the work appurtenant or accessory thereto under the license.

Article 40. So far as it is consistent with proper operation of the project, the Licensee shall allow the public free access to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided,

that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 41. The Licensee shall, within one year from the date of issuance of this license, file with the Commission a recreational use plan for the project which shall include not only recreational improvements which may be provided by others, but the recreational improvements the Licensee plans to provide.

Article 42. The Licensee shall operate the project reservoirs during flood periods so that the releases from the reservoirs are no greater than those which would occur under natural stream conditions.

Article 43. The Licensee shall pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part 11 of the Commission's regulations as in effect from time to time. The authorized installed capacity for such purpose is 78,800 horsepower.

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, an amount to be determined hereafter by the Commission.

Article 44. The Licensee shall install additional capacity and make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 45. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, hydraulically and electrically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 46. The Licensee shall negotiate with a qualified institution for the purpose of consummating an agreement for the possible survey and salvage of historical and archeological data (including relics and specimens) in the project area and shall finance such survey and salvage program in an amount not to exceed $25,000 upon further order of the Commission.

Article 47. The Licensee shall submit for Commission approval, Exhibits L–20 and L–21, both entitled "Bowman-Spaulding Conduit" showing final engineering details for that conduit and shall not commence reconstruction of the conduit until the Commission has approved the exhibits.

Article 48. The Licensee shall submit for Commission approval a revised Exhibit L drawing for the Dutch Flat No. 2 Afterbay Dam showing the final design of the dam and shall not commence construction of the dam until the Commission has approved the exhibit.

Article 49. The Commission reserves the right to determine at a later date what transmission lines and appurtenant facilities, if any, shall be included in this license as part of the project works.

Article 50. The Commission reserves the right to determine at a later date what additional facilities, if any, which are owned and operated by the Licensee as part of the comprehensive plan of development of the Upper Yuba and Bear River Project, shall be included in this license.

(D) Concurrently with acceptance of this license, the Licensee shall file with the Commission an application for surrender of the license for Project No. 338.

(E) The Licensee shall, within 30 days of its execution, file with the Commission a copy of its aforementioned agreement with Pacific Gas and Electric Company for the purchase by Pacific, of the power to be generated by Project No. 2266, and for payment by Pacific for additional storage to be created by Project No. 2266 and supplied to Pacific for use by its proposed Project No. 2310.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Commissioner Morgan *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 2310

ORDER ISSUING LICENSE (MAJOR)

(Issued June 24, 1963)

Application was filed on March 16, 1962, and amended on December 10, 1962, by Pacific Gas and Electric Company (Applicant), of San Francisco, California, for a license under the Federal Power Act (Act) for Project No. 2310 comprising certain constructed and certain proposed project works, located on the upper reaches of the South Yuba and Bear Rivers in Nevada and Placer Counties, California, near the cities of Auburn, Colfax, Grass Valley and Nevada City, and affecting lands of the United States within the Tahoe National Forest.

The application for license, as amended, seeks a major 50-year license for the greater portion of the project works involved in minor-part Project No. 889; the generating facilities of Applicant's unlicensed Drum-Spaulding system; a portion of a transmission line involved in minor-part Project No. 181; the Fordyce reservoir involved in minor-part Project No. 423; certain unlicensed reservoirs; a proposed enlargement of the Drum canal; and a proposed Drum No. 2 powerhouse. Applicant has estimated the cost of the proposed additional project works at about $9,000,000.

Applicant proposes to surrender its present "minor-part licenses" which it holds for the occupany and use of government lands by the existing works of this project, without waiver of any of its existing rights with respect to the occupancy of said lands, in return for the issuance of a fair value license pursuant to Section 23 (a) of the Act. This, we feel, must be denied. Section 23 (a) requires that the Applicant be possessed of a permit or valid existing right of way issued or granted by the Federal Government prior to June 10, 1920. See *Niagara Falls Power Co.* v. *FPC*, 137 F. 2d 787; cert. den. 320 U.S. 792. The Applicant claims the right of occupancy of the government lands here involved by virtue of appropriation under the Act of July 26, 1866, and by virtue of the "minor part license" issued by the Commission for Projects 181, 423 and 889, in and prior to 1930. However, the Act of 1866 was not applicable to hydroelectric project works. *Utah Power & Light Co.* v. *U.S.*, 243 U.S. 389, 405–406. *Cf. Southern California*

Edison Co. 8 FPC 364, 377–381. We are of the view, therefore, that Applicant does not possess any rights with respect to the government lands here involved of a nature to entitle it to a fair value license. Since the Applicant is not possessed of such a valid, outstanding permit or right of way issued prior to June 10, 1920, this aspect of the application must be denied.

The Applicant also requests that, upon surrender of its minor-part licenses for Project Nos. 181, 423 and 889, the Commission issue a new 50-year license for the existing project works incorporated in the present application and the new developments here proposed. An examination of such "minor-part licenses" issued by the Commission shows that, with the exception of the license for Project No. 181, which was issued to cover certain transmission lines and appurtenant structures, these so-called licenses were in fact issued for the purpose of authorizing the occupancy and use of certain lands of the United States within the Tahoe National Forest. However, the licensing authority of the Commission runs to the "project works"; i.e., the dams, reservoirs, powerhouses, etc., themselves, and not to the mere occupancy and use of the government lands involved, as was the expressed purpose of these licenses. See *Lake Ontario Land Develop. etc.* v. *F.P.C.*, 212 F. 2d 227; and *Montana Power Co.* v. *F.P.C.*, 298 F. 2d 335.

It is apparent that the Commission's finding that the project works which were existing and proposed under these licenses constituted mere "minor parts of complete projects" was a finding of convenience based on an erroneous conclusion of law as to the nature and extent of project works as constituting "minor parts" of a complete project. *Cf. Pacific Gas and Electric Company*, Project No. 708 (2 FPC 632). The erroneous action of the Commission, however, effectively waived the provisions of Section 14 of the Federal Power Act and consequently the project works are not now subject to recapture by the United States thereunder upon payment of net investment, but no more than fair value. This Commission has the power and responsibility of taking appropriate corrective action. *Niagara Falls Power Company* v. *F.P.C.*, *supra*.

There remains for consideration the question as to which of the means available to the Commission for correcting these licenses would be in the best public interest. The additional construction contemplated by the application would represent a more efficient development of the water resources of the area. Since these so-called "minor part" licenses were improperly issued we are of the view that they should not be amended to include the changes and additions required for the proposed redevelopment.

Applicant proposes to assist Nevada Irrigation District in financing its proposed redevelopment in Project No. 2266 by entering into a long term contract with the District for the purchase of the power output of District's proposed Project No. 2266 and for payment for additional storage to be provided by Project No. 2266 which would be used for power development at Applicant's proposed Project No. 2310. As we point out in the companion order issuing license for Project No. 2266, *supra*, p. 1256, such long-term contract is necessary to make the development of Project No. 2266 to provide water for irrigation economically feasible, and, if the Applicant for Project No. 2310 does not have a license to maintain its power houses and other project works during the period of the proposed contract, it would not be in a position to enter into such a contract. In our view, it will be in the public interest to issue a major license to the Applicant with appropriate terms and conditions. The new license will be made

subject, among other things, to the conditions that the Applicant surrender its minor part licenses for Project Nos. 181, 423 and 889, and that it enter into the proposed agreement with Nevada Irrigation District.

The application for license, as amended, should have included certain additional facilities as part of Project No. 2310. Accordingly, we are requiring as a condition of this license that Applicant apply for amendment to include the facilities hereinafter specified.

The Department of the Interior, in reporting on the application, recommended, for inclusion in any license issued for the project, certain special conditions in the interest of fish and wildlife resources and archeological values.

The Department of Agriculture, in reporting on the application, recommended, for inclusion in any license issued for the project, certain special conditions for the protection of the national forest resources involved.

The Department of Fish and Game of The Resources Agency of California, in reporting on the application, recommended, for inclusion in any license issued for the project, special conditions almost identical with those recommended by the Department of the Interior.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of California and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license.

(2) The project affects lands of the United States, but not a Government dam.

(3) Public notice of the filing of the application has been given as required by the Act. No protests have been received. A petition to intervene was filed by the California Department of Fish and Game. No conflicting application is before the Commission.

(4) The issuance of a license for the project as hereinafter provided will not interfere or be inconsistent with the purposes for which the Tahoe National Forest was created or acquired.

(5) The issuance of a license for the project will not affect the development of any water resources for public purposes which should be undertaken by the United States.

(6) The project is best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, under the terms and conditions hereafter imposed.

(7) The installed horsepower capacity of the project for the purpose of computing the capacity component of the administrative annual charge is 152,000 horsepower.

(8) The amount of annual charges to be paid under the license for the project for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified, and the amount of annual charges to be paid under the license for the use, occupancy and enjoyment of its lands should be determined at a later date as hereinafter provided.

(9) The existing and proposed transmission facilities described in paragraph (B) below, which were included in the application for license are parts of the

project within the meaning of Section 3 (11) of the Act and should be included in the license for the project.

(10) The exhibits designated and described in paragraph (B) below, conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Pacific Gas and Electric Company (Licensee) under Section 4(e) of the Act for a period of 50 years, effective as of May 1, 1963, for the construction, operation and maintenance of Project No. 2310, located on the South Yuba and Bear Rivers and tributaries, affecting lands of the United States within the Tahoe National Forest, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2310 which, except for the proposed Drum No. 2 powerhouse and associated facilities, is constructed and known as the Drum-Spaulding Development, consists of:

(i) All lands constituting the project area and inclosed by the project boundary or the limits of which are otherwise defined, and/or interest in, such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2310–1) General Map;

Exhibit K: K–1 (FPC No. 2310–2) Project Lakes; K–2 (FPC No. 2310–3) Lake Culbertson; K–3 (FPC No. 2310–4) Lake Fordyce; K–4 (FPC No. 2310–5) Lake Sterling; K–5 (FPC No. 2310–6) Topography of Spaulding Reservoir; K–6 (FPC No. 2310–7) Canals, Road and Transmission Lines; K–7 (FPC No. 2310–8) Penstocks and Powerhouses—Drum Project; and K–8 (FPC No. 2310–9) Drum Afterbay.

(ii) Project works consisting of:

Dams and Reservoirs

Upper Rock Lake—an earth-fill dam located on Texas Creek, a spillway, a reservoir with an area of about 21 acres and a useable capacity of about 207 acre-feet and a controlled outlet under the dam;

Lower Rock Lake—an earth and rock-fill dam located on Texas Creek, a spillway, a reservoir with an area of about 9 acres and a useable capacity of about 48 acre-feet and a controlled outlet under the dam;

Culbertson Lake—an earth-fill dam located on a small tributary of Texas Creek, a spillway, a reservoir with an area of 70 acres and a capacity of about 950 acre-feet and a controlled outlet under the dam;

Upper Lindsey Lake—an earth-fill dam located on a small tributary of Texas Creek, a spillway channel discharging into Culbertson Lake, a reservoir with an area of about 6 acres and a capacity of about 18 acre-feet and a controlled outlet under the dam;

Middle Lindsey Lake—an earth and rock-fill dam located on Lindsey Creek, a spillway, a reservoir with an area of about 24 acres and a capacity of about 110 acre-feet and a controlled outlet under the dam;

Lower Lindsey Lake—an earth-fill dam located on Lindsey Creek, a spillway, a reservoir with an area of about 29 acres and a capacity of about 295 acre-feet and a controlled outlet under the dam;

Upper Feeley Lake—an earth-fill dam located on Lake Creek, a spillway, a reservoir with an area of about 56 acres and a capacity of about 740 acre-feet and a controlled outlet under the dam;

Lower Feeley Lake—an earth-fill dam located on Lake Creek, a spillway, a reservoir with a area of about 17 acres and a capacity of about 150 acre-feet and a controlled outlet under the dam;

Blue Lake—an earth and rock-fill dam located on Rucker Creek, a spillway, a reservoir with an area of about 63 acres and a capacity of about 1,163 acre-feet and a controlled outlet under the dam;

Rucker Lake—on earth and rock-fill dam located on Rucker Creek, a spillway, a reservoir with an area of about 70 acres and a capacity of about 650 acre-feet and a controlled outlet under the dam;

Fuller Lake—an earth-fill dam located on a small tributary of South Yuba River, a siphon spillway, a reservoir with an area of about 69 acres and a capacity of about 1,110 acre-feet and a controlled outlet, under the dam;

Meadow Lake—an earth-fill dam located on a small tributary to Fordyce Creek, a spillway, a reservoir with an area of about 250 acres and a capacity of about 4,935 acre-feet and a controlled outlet under the dam;

Lake Sterling—a rock-crib dam with reinforced gunite upstream face located on a small tributary of Fordyce Creek, a reservoir with an area of about 112 acres and a capacity of about 1,764 acre-feet and a controlled outlet under the dam;

Lake Fordyce—a rock-fill dam with concrete face located on Fordyce Creek, a spillway, a reservoir with an area of about 735 acres and a capacity of about 46,662 acre-feet and a controlled outlet under the dam;

Upper Peak Lake—an earth and rock-fill dam located on a small tributary to South Yuba River, a spillway, a reservoir with an area of about 85 acres and a capacity of about 1,735 acre-feet and a controlled outlet under the dam;

Lower Peak Lake—an earth-fill dam located on a small tributary to South Yuba River, a spillway, a reservoir with an area of about 33 acres and a capacity of about 485 acre-feet and a controlled outlet under the dam;

Lake Spaulding—a concrete arch main dam located on South Yuba River and four concrete auxiliary saddle dams, numbered dams Nos. 2, 3, 4 and 5—No. 2 is an arch dam which is essentially a spillway with a center gated section and flashboard section on either side—Nos. 3, 4 and 5 are three joined buttressed gravity dams, a reservoir with an area of about 695 acres and a capacity of about 74,815 acre-feet, a sluice tunnel through the main dam, a tunnel through the left abutment and branch tunnels and penstocks to Spaulding Nos. 1 and 2 power plants;

Drum Forebay—an earth-fill dam to be raised located at the lower end of the Drum Canal and Siphon, a spillway, a reservoir with a capacity of about 550 acre-feet and controlled outlets to Drum powerhouse;

Drum Afterbay—a concrete arch dam located on Bear River immediately downstream from Drum powerhouse, a spillway, a reservoir with an area of about 10 acres and a capacity of about 197 acre-feet and a controlled outlet; and

Deer Creek Forebay—an earth-fill dam located at the lower end of the Main South Yuba and Chalk Bluff Canals, a spillway, a reservoir with an area of about 5 acres and a capacity of about 20 acre-feet.

Conduits

Drum Canal—a canal from Spaulding No. 1 Powerhouse to Drum Forebay about 9.4 miles long consisting of open ditch, flume, tunnel and pipe with the capacity of the canal to be increased from 500 to 700 cfs;

Main South Yuba Canal—a canal about 19.15 miles long from Spaulding No. 2 Powerhouse to Deer Creek Forebay consisting of ditch, flume, tunnel and pipe;

Powerhouses and Associated Facilities

Spaulding No. 1—an underground powerhouse located below Lake Spaulding containing one 10,500-horsepower turbine connected to a 6,400-kilowatt generator, a penstock and step-up transformers and switching facilities;

Spaulding No. 2—a powerhouse located below Spaulding dam containing one 5,300-horsepower turbine connected to a 3,700-kilowatt generator, a penstock and semi-automatic operating equipment;

Spaulding No. 3—a powerhouse located on the bank of Lake Spaulding (using water from Nevada Irrigation District's Bowman-Spaulding Canal) containing one 8,000-horsepower turbine connected to a 6,300-kilowatt generator, a penstock, step-up transformers and switching equipment and full automatic operating equipment;

Dear Creek—a powerhouse located on Deer Creek containing one 7,500-horsepower turbine connected to a 5,500-kilowatt generator, a penstock, semi-automatic operating equipment, and step-up transformers and switching equipment;

Drum No. 1—a powerhouse located on Bear River containing four 18,000-horsepower turbines each connected to a 12,000-kilowatt generator, penstocks, step-up transformers, switching equipment and the Drum-Dutch Flat road;

Drum No. 2—(Proposed) a powerhouse located up-stream from Drum No. 1 containing one 59,000-horsepower turbine connected to a 44,100-kilowatt generator, a penstock, a step-up transformer and switching equipment.

Transmission Lines

1. A 60-kv single circuit line about 1.1 miles long extending from Spaulding No. 3 to the interconnected transmission system at Spaulding 60 kv substation;

2. A 2.3-kv single circuit line extending about 200 feet from Spaulding No. 2 to the generator bus at Spaulding No. 1;

3. Two short 60-kv single circuit taps from the high tension bus at Spaulding No. 1 to the interconnected transmission system at Spaulding 60-kv substation;

4. A 60-kv single circuit line extending about 6.25 miles from Deer Creek powerhouse to the interconnected transmission system at Drum 60-kv substation;

5. Two short 60-kv taps from Drum No. 1 powerhouse to the interconnected transmission system at Drum 60-kv substation;

6. Four short 110-kv taps from Drum No. 1 powerhouse to the interconnected transmission system at Drum 110-kv substation;

7. A proposed short 110-kv line from Drum No. 2 to the Drum 110-kv substation; and appurtenant electrical and mechanical facilities; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed a part of the application for license and which are designated and described as follows:

Exhibit L: General Design Drawings.

Exhibit	FPC No. 2310	Description, Drum-Spaulding development
L-1	-10	Reservoir, Dam and Spillway, Upper Rock Lake.
L-2	-11	Dam and Reservoir, Lower Rock Lake.
L-3	-12	Dam and Spillway, Lake Culbertson.
L-4	-13	Dam and Reservoir, Upper Lindsey Lake.
L-5	-14	Reservoir, Dam and Spillway, Middle Lindsey Lake.
L-6	-15	Dam and Reservoir, Lower Lindsey Lake.
L-7	-16	Dam and Reservoir, Upper Feeley Lake.
L-8	-17	Dam and Reservoir, Lower Feeley Lake.
L-9	-18	Dam and Reservoir, Blue Lake.
L-10	-19	Dam and Reservoir, Rucker Lake.
L-11	-20	Dam and Reservoir, Fuller Lake.
L-12	-21	Dam and Reservoir, Meadow Lake.
L-13	-22	Plan and Sections of Dam, Lake Fordyce.
L-14	-23	Dam and Spillway, Lake Sterling.
L-15	-24	Dam and Reservoir, Upper Peak Lake.
L-16	-25	Dam and Reservoir, Lower Peak Lake.
L-17	-26	Plan and Sections, Lake Spaulding, Dams Nos. 3, 4, and 5.
L-18	-27	Plan View and Details, Lake Spaulding Dam No. 1.
L-19	-28	Elevations and Sections, Spaulding Dam No. 1.
L-20	-29	Plans, Elevations and Sections, Lake Spaulding Spillway Dam No. 2.
L-21	-30	Plan and Profile of Penstock, Plan and Sections, Spaulding No. 3 Power house.
L-22	-31	General Plan and Sections, Spaulding Powerhouse No. 1.
L-23	-32	General Plan, Sections and Penstock, Spaulding Powerhouse No. 2.
L-24	-33	Canal, Flume and Tunnel Sections, Drum Canal.
L-25	-34	Dam and Reservoir, Drum Forebay.
L-26	-35	Profile of Drum Penstocks Nos. 1, 2, and 3.
L-27	-36	General Plan and Sections, Drum Powerhouse No. 1.
L-28	-37	General Arrangement, Drum Powerhouse No. 2.
L-29	-38	Basement Floor Plan and Section, Drum Powerhouse No. 2.
L-30	-39	Generator and Turbine Floor Plan, Drum Powerhouse No. 2.
L-31	-40	Drum Afterbay Dam.
L-32	-41	Typical Cross Sections Chalk Bluff and Main South Yuba Canals.
L-33	-42	Reservoir and Dam, Deer Creek Forebay.
L-34	-43	Profile of Deer Creek Penstock.
L-35	-44	Plan and Sections, Deer Creek Powerhouse.

Exhibit M: Three typewritten pages entitled "General Description and General Specifications of Mechanical, Electrical and Transmission Equipment," filed in the Commission December 10, 1962.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-2, December 15, 1953, entitled "Terms and Conditions of License for Unconstructed Project Affecting Lands of the United States" (17 FPC 62), which terms and conditions, designated as Articles 1 through 24, are attached hereto and made a part thereof, except for Articles 12, 13, 17 and 20 thereof, and subject to the following special conditions set forth herein as additional articles:

Article 25. The Licensee shall commence construction of Drum No. 2 Powerhouse within two years of the effective date of this license, shall thereafter in good faith and with due diligence prosecute such construction, and shall complete construction of such project works within four years from the effective date of this license, but not later than the time additional water supply is available from Project No. 2266 of Nevada Irrigation District.

Article 26. The Licensee shall, within two years from the effective date of this license, file with the Commission revised Exhibits F and K to define the final project boundary including transmission line rights-of-way in accordance with the rules and regulations of the Commission.

Article 27. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such fishways, including fish traps, or other fish handling facilities or fish protective devices and supporting facilities for artificial propagation and comply with such reasonable modifications of the project structures and operation in the interest of fish life as may be prescribed hereafter by the Federal Power Commission upon its own motion or upon the recommendations of the Secretary of the Interior, or the California Department of Fish and Game, after notice and opportunity for hearing and upon a finding based on substantial evidence that such modifications are necessary and desirable, and consistent with the provisions of the Act.

Article 28. Whenever the United States shall desire, in connection with the project, to construct fish handling facilities or to improve the existing fish handling facilities at its expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such fish handling facilities or such improvements thereof. In addition, after notice and opportunity for hearing the Licensee shall modify the project operation as may be prescribed by the Commission, consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish handling facilities constructed or improved by the United States under the provision of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish handling facilities or to relieve the Licensee of any obligation under this license.

Article 29. The Licensee shall install additional capacity and make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 30. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 31. The Commission reserves the right to determine at a later date what additional transmission facilities, if any, should be included in this license as part of the project works.

Article 32. The Licensee shall pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, one (1) cent per horsepower on the installed capacity (152,000 horsepower) plus two and one-half (2½) cents per 1,000 kilowatt-hours of energy generated by the project during the calendar year for which the charge is made; or such other amounts as may hereafter be determined as necessary to reimburse the United States for the costs of administration.

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands including those used for transmission line right-of-way purposes, an amount to be hereafter determined by the Commission.

Article 33. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 34. The Licensee shall, within one year from the date of issuance of this license file with the Commission a recreational use plan for the project which shall include not only recreational improvements which may be provided by others, but the recreational improvements the Licensee plans to provide.

Article 35. During the period of this license, the right of the Licensee to occupy public lands in the various project lakes in which the Licensee claims rights of occupancy under the Act of July 26, 1866, will be derived from this license notwithstanding any rights the Licensee may have prior to the issuance here of or after the termination of this license for any cause.

Article 36. The actual legitimate original cost, estimated where not known, and the accrued depreciation of the parts of the project completed prior to the effective date of the license shall be determined by the Commission as of such effective date, in accordance with the Act, and the rules and regulations of the Commission, and such cost less such accrued depreciation, so determined, shall be the net investment in the project as of such effective date.

Article 37. The actual legitimate original cost of the parts of the project to be completed after the effective date of the license, and of any addition to or betterment of the project, shall be determined by the Commission in accordance with the Act and the rules and regulations of the Commission thereunder.

Article 38. The Licensee shall operate the project reservoirs during flood periods so that the releases from the reservoirs are no greater than those which would occur under natural stream conditions.

Article 39. The Licensee shall maintain stream flows below project structures as follows:

	Stream	Minimum flow, c.f.s.	Period	Qualifications
(i)	Texas Creek below Upper Rock Lake, Texas Creek below Lower Rock Lake, Lindsey Creek below Middle Lindsey Lake.	0.25	7/1-9/30	May be diverted to Bowman-Spaulding Conduit.
(ii)	Tributary to Texas Creek below Culbertson Lake.	.75	Yearlong	May be diverted to Bowman-Spaulding Conduit.
(iii)	Lindsey Creek below Lower Lindsey Lake, Lake Creek below Upper Feeley Lake, Lake Creek below Lower Feeley Lake, Rucker Creek below Blue Lake, Rucker Creek below Rucker Lake.	.50	Yearlong	May be diverted to Bowman-Spaulding Conduit.

Stream	Minimum flow, c.f.s	Period	Qualifications
(iv) Fordyce Creek below Fordyce Lake.	5.0	Yearlong provided that sufficient Lake storage shall be reserved at the time of outlet adjustment for unattended winter operation to insure an initial flow of 5 c.f.s. and not less than 3 c.f.s. at Lake level of maximum winter drawdown.	Lake storage in excess of these releases to be prorated over the period 7/1 to the date of winter operational adjustment without causing Spaulding Reservoir to spill; Fordyce Lake not to be drawn down below 3,000 acre feet of storage.
(v) South Yuba River below Lake Spaulding.	1.0	Yearlong	To be released at or adjacent to Spaulding Powerhouse No. 2.
(vi) South Yuba River at Langs Crossing.	5.0	Yearlong	To be released from Lake Spaulding.
(vii) Bear River 0.1 mile below the site of the California Department of Fish and Game's Bear River Fish Planting Base.	5.0	Yearlong	To be released from South Yuba Canal.
(viii) Bear River below:			
Drum Afterbay	*Dry year*		
	5	3/1–9/30	
	5	10/1–2/28–29	Dry year conditions are deemed to exist in the month following whenever the accumulated seasonal precipitation at Lake Spaulding commencing with Oct. 1, is equal to or less than: 29 inches as of Jan. 31, 35 inches as of Feb. 28–29, 40 inches as of Mar. 31, 45 inches as of Apr. 30; provided that if total precipitation by Apr. 30 is 45 inches or less, dry year conditions are deemed to exist for the remainder of the year.
	Normal year		
	10	3/1–9/30	
	5	10/1–2/28–29	

Provided, that in lieu of maintaining flow records the Licensee shall devise and implement a plan for checking minimum stream flows by means of stream stage marks on natural stream features, and calibration of project structure gates and valves, which shall be acceptable to the United States Forest Service, the California Department of Fish and Game, and the Bureau of Sport Fisheries and Wildlife. Provided further, that the Licensee may make such reasonable deviations in the schedule of item (vii) as may be necessitated by maintenance or repair operations on South Yuba Canal. Provided further, that the Licensee shall regulate downstream releases in as near uniform flow as possible, and provided further, that the Licensee shall conduct the normal operations of the Bear River waste gate so as to provide gradual changes in rates of releases from the Drum Canal into the Bear River insofar as possible, excepting emergencies and allowances for the safety of the Drum Canal.

Article 40. The Licensee shall maintain water levels in project reservoir lakes as follows:

Reservoir Lake	*Water level schedule*
(i) Meadow Lake	Maximum level consistent with project operations June 1 to August 1.
(ii) Rucker Lake, Sterling Lake, Lower Rock Lake, Lower Feeley Lake.	Maximum level consistent with project operations June 1 to September 1.
(iii) Fuller Lake	Maximum level consistent with project operations year round; any necessary drawdowns not to decrease the level below the bottom elevation of the Nevada Irrigation District's outlet ditch.
(iv) Upper Lindsey Lake	Level as permitted with no drawdown for irrigation or power purposes.
(v) Upper Cascade (Peak) Lake, Lower Cascade (Peak) Lake.	Maximum level consistent with project operations and with use of the storage to maximize recreational use of the lakes and to augment the flow of the South Yuba River during the fall months.

Provided, that the Licensee may make such reasonable deviations in the foregoing schedules as may be necessitated by maintenance or repair operations. Provided further, that the Licensee shall release storage during drawdowns in as near uniform flow as possible. And provided further, that the Licensee shall retain sufficient storage above lake outlets at the end of each annual drawdown so that uninterrupted operation of outlet controls can be assured insofar as possible and streamflow requirements can be met during unattended winter periods.

Article 41. The Licensee shall take whatever precautions are necessary to prevent the entry into any streams or waters in or below the project area of any clay, silt, sand, gravel, fines, detritus, oil, or other substances which are injurious to fish and wildlife or their habitat.

Article 42. The Licensee shall construct deer-proof fences, deer cross-walks covered with soil, deer-escape ramps, and such other structures or modifications to project features reasonably found necesary to protect deer in the project area based on precise definition of any problem areas, as may be prescribed by the Commission upon the recommendations of the United States Forest Service, California Department of Fish and Game, or the Bureau of Sport Fisheries and Wildlife.

Article 43. The Licensee shall strip and stockpile top soil from all borrow areas prior to borrow operations, and shall regrade these areas as practicable and replace top soil upon completion of borrow operations. Additionally, all borrow areas on Federal lands not subject to project inundation shall be revegetated, as prescribed by the administering government agency.

Article 44. The Licensee shall consult with the Central California Archaeological Foundation, P.O. Box 5595, Sacramento, California, to negotiate a contract for the possible survey and salvage of historical and archaeological data (including relics and specimens) in the new construction area of the Drum No. 2 Powerhouse and shall finance such survey and salvage program in an amount not to exceed $2,000 upon further order of the Commission.

Article 45. All permanent project roads on lands within the Tahoe National Forest, which may be constructed by the Licensee, shall be constructed to standards as may be prescribed by the Commission.

Article 46. Timber on lands of the United States cut, used, or destroyed in the construction and maintenance of the project works, or in the clearing of said lands, shall be paid for and the resulting slash and debris disposed of in accordance with the requirement of the agency of the United States having jurisdiction over said lands. Payment for merchantable timber will be at current stumpage rates, and payment for young growth timber below merchantable size will be at current damage appraisal value. However, the agency of the United States having jurisdiction may sell or dispose of the merchantable timber to others than the Licensee, with the provision that timber so sold or disposed of will be cut and removed from the area prior to or without undue interference with clearing operations of the Licensee and in coordination with his project construction schedules. Such sale or disposal to others will not relieve the Licensee of the responsibility for the clearing and disposing of all slash and debris from project lands.

Article 47. The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned to prevent, make advance preparations for suppression, and suppress fires on the lands to be occupied or used under the license. The Licensee shall be liable for any and pay the costs incurred by the United States in suppressing fires caused from the construction,

operation, or maintenance of the project works or of the work appurtenant or accessory thereto under the license.

Article 48. The Licensee shall, within six months from the effective date of this license, submit for Commission approval plans for repairs on the following dams and appurtenant works in the interest of structural safety and the Licensee shall accomplish such repairs upon further order of the Commission: Upper Lindsey, Middle Lindsey, Lower Lindsey, Lower Feeley, Rucker, Fuller, Sterling, Fordyce, Spaulding Nos. 2, 3, 4 and 5, and Drum Forebay.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license *Provided, however*, that our approval of Exhibit K designated in said paragraph (B) does not approve the Licensee's claimed rights in the lands shown thereon as "Fee Simple Absolute or Determinable Fee under the Act of July 26, 1866."

(E) Concurrently with the acceptance of this license, the Licensee shall file with the Commission an application for surrender of the licenses for Project Nos. 181, 889 and 423.

(F) The Licensee shall, within six months from the effective date of this license, file: (1) an application for amendment of this license to include herein the following project works not included in Applicant's application for license for Project No. 2310, the same being the Bear River Canal and 60 KV Drum-Spaulding Summit transmission lines, together with appropriate exhibits, in accordance with the Commission's Rules and Regulations.

(G) The Licensee shall, within six months from the effective date of this license, file an application for amendment of this license to include herein the unlicensed portion of the double circuit 110 KV Drum-Summit transmission line, the Dutch Flat No. 1 powerhouse, the Drum-Dutch Flat No. 1 tunnel, Kelly Lake, Kidd Lake and Van Norden Lake: *Provided, however*, that the Commission reserves the right to require the filing of further application for amendment of this license to include herein, as part of the project works of Project No. 2310, such other facilities in the area owned by the Licensee which are then being operated as part of Project No. 2310.

(H) The aforesaid request of Pacific Gas and Electric Company for a fair value license pursuant to Section 23 (a) of the Act for Project No. 2310, is denied.

(I) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313 (a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Commissioner Morgan *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SOUTH TEXAS NATURAL GAS GATHERING COMPANY, DOCKET NO. CP63-220

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 24, 1963)

On February 4, 1963, South Texas Natural Gas Gathering Company (Applicant) filed in Docket No. CP63-220 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity author-

izing the installation of one 1000 H.P. compressor for standby use at its Station 10 located in Webb County, Texas, all as more fully set forth in the application.

Applicant states that the four presently installed compressors at Station 10 are adequate to handle anticipated normal requirements, but inadequate in the event of outage of one of the units. Operating time at Station 10 has been analyzed for the six months period from April 1, 1962, to September 30, 1962, resulting in the determination that there were 32.83 days in which a 1000 H.P. unit was required but not available. Annually this would amount to 65.5 days of short horsepower. The loss of efficiency during these short horsepower days reduces station throughout by 25,200 Mcf per day thus reducing sales as well as adding to take-or-pay problems with suppliers. No new service is proposed in this application.

Installation cost is estimated at $202,500 to be financed from cash on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 11, 1963, respecting the matters involved in and the issues presented by application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, South Texas Natural Gas Gathering Company, a Texas corporation having its principal place of business at Post Office Drawer 521, Corpus Christi, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, South Texas Natural Gas Gathering Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP63-236

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued June 24, 1963)

On February 21, 1963, Tennessee Gas Transmission Company filed an application in Docket No. CP63-236 pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain leases in Blocks 16 and 24 of the Block 17 Field, Offshore, East Cameron Parish, Louisiana. Attachment of the said leases to Tennessee's system were authorized by certificate in Docket No. CP60-64.

Applicant states that it seeks authorization to abandon the leases in Blocks 16 and 24 for the reasons (1) the leases are presently nonproductive of gas in the gas reservoirs originally submitted in the application for a certificate of public convenience and necessity in Docket No. CP60-64; and (2) A "farmout" agreement has been entered into with Kerr-McGee Oil Industries, Inc., to further test these and adjoining properties. Under the agreement, any gas which may be subsequently discovered will be sold to Applicant.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 11, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision pursuant to Section 1.30(c) (1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation with its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The abandonment of the leases hereinbefore described is subject to the jurisdiction of the Commission under the provisions of Section 7(b) of the Natural Gas Act.

(3) The abandonment of the said leases are required by the public convenience and necessity, and authorization therefor should be granted.

(4) Permission and approval to abandon the leases shall not be construed as a waiver of the requirements of the Uniform System of Accounts and the filing of proposed accounting entries upon the consummation of the sale of the facilities involved.

(5) A request during the public hearing by staff counsel for omission of the intermediate decision procedure was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant, Tennessee Gas Transmission Company, of the leases as hereinbefore described, be and the same is hereby granted upon the terms and conditions of this order.

(B) Permission and approval to abandon the leases shall not be construed as a waiver of the requirements of the Uniform System of Accounts and the filing of the proposed accounting entries upon the consummation of the sale of the said leases.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.; TENNECO CORPORATION, DOCKET NO. G–18980 AND CP60–6; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. RP63–3

ORDER GRANTING MOTION FOR RECONSIDERATION, APPROVING PROPOSED SETTLEMENT, CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, AND IMPOSING REPORTING REQUIREMENTS

(Issued June 24, 1963)

These matters are before us on a pleading entitled "Application for Rehearing and Alternatively A Motion for Reconsideration . . ." filed in the above-captioned matters on May 31, 1963, by Tenneco Corporation (Tenneco).

On July 16, 1959, Tennessee Gas Transmission Company (TGT), predecessor in interest to Tenneco Corporation (Tenneco), filed in Docket No. G–18980 an application for a certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act (Act) to sell natural gas in interstate commerce from leases in the Block 40 Field, West Cameron Area, Louisiana, to Transcontinental Gas Pipe Line Corporation (Transco). TGT had acquired the properties from which the gas is sold from Phillips Petroleum Company (Phillips) by assignment dated May 28, 1959. At the time that TGT acquired these leases, Phillips was making sales of gas to Transco therefrom pursuant to a certificate issued in Docket No. G–14244. *Transcontinental Gas Pipe Line Corp.*, 20 FPC 264 remanded, *P.S.C. of N.Y.* v. *F.P.C.*, 361 U.S. 195. However, the assignment related back to a date prior to initial deliveries.[1]

On January 12, 1960, TGT filed in Docket No. CP60–6 an application for a certificate of public convenience and necessity to sell gas to Transco from leases located in the Block 76 Field, Offshore Vermillion Parish, Louisiana. These properties, non-productive at the time of acquisition, were also acquired from Phillips in 1959. On February 18, 1960, TGT was given temporary authorization to make the sales in Docket No. CP60–6.

By order issued August 28, 1962, 28 FPC 382, in Docket No. CI61–1273 Tenneco was authorized to succeed to the interests of TGT in Docket Nos. G–18980 and CP60–6; the contract covering the sale of gas from the Block 40 Field was redesignated as Tenneco's F.P.C. Gas Rate Schedule No. 29 and the contract covering the sale from the Block 76 Field was redesignated as Tenneco's F.P.C. Gas Rate Schedule No. 44.

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[1] See our Order issued March 26, 1963 in *Phillips Petroleum Company, et al.*, Docket No. G–14244, *et. al.*, 29 FPC 581.

On February 7, 1963, the proceedings in Docket Nos. G–18980 and CP60–6 were consolidated for hearing with the proceedings in Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

On March 11, 1963, Tenneco filed a motion for severance, for approval of settlement agreement and issuance of permanent certificates and request for prompt determination. The proposed settlement agreement was attached thereto and designated Appendix A. No answers to Tenneco's motion were filed. On April 11, 1963, we issued an order severing these Tenneco proceedings from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.* and provided for an abridged hearing to be held on the Tenneco applications on April 23, 1963. At this hearing, the Pennsylvania Public Utility Commission (Pennsylvania) expressed its objection to the settlement proposal. The Presiding Examiner referred the matters to the Commission and we, without passing on the merits of the settlement proposal but because of the objection by one of the parties, on May 1, 1963, 29 FPC 874, issued an order rejecting the settlement proposal and reconsolidating the Tenneco matters with the proceedings in Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.* On June 10, 1963, Pennsylvania filed a withdrawal of its objection to the Tenneco settlement proposal.

Since we believe the Tenneco settlement proposal to be in the public interest and in view of the fact that Pennsylvania has filed a withdrawal of its objection, we shall treat Tenneco's Application of May 31, 1963, as a motion for reconsideration of our order of May 1, 1963, rejecting the settlement proposal and consolidating proceedings, grant the motion for reconsideration, vacate the order of May 1, 1963, insofar as it concerned Tenneco's applications in Docket Nos. G–18980 and CP60–6, and conditionally issue certificates to Tenneco as proposed and modified by the settlement agreement.

The terms of the settlement include:

(1) A moratorium on rate increase filings under the subject rate schedules from January 1, 1963 to December 31, 1967, inclusive; provided, however, that such filings may be made prior to January 1, 1968, (1) to the extent that the maximum suspension period under Section 4(e) of the Act may be extended beyond five months; (2) in case any tax is levied by the United States on gas sold under such rate schedules, the reimbursement for which is contractually provided. Under the latter proviso, the reimbursement will not exceed one-half of the tax levied by the United States.

(2) Refunds to Transco are under terms similar to those approved by us in previous settlements.[2] Tenneco will refund to Transco two-thirds of the difference between the rate actually collected and the settlement rate for gas taken under these two rate schedules. The two-thirds refund calculations will be made in a manner similar to that approved by us in the *Texaco Inc., et al.* order issued July 30, 1962, 28 FPC 247. However, in this matter, December 1962 will be the starting point for the regressive calculation. Full refunds will be made for amounts above the settlement rates collected between January 1, 1963 and March 31, 1963. The settlement rate in Docket No. G–18980 is 20.625 per Mcf,[3] 1.625¢[4] of which will be paid by Transco to an escrow agent to provide for the

[2] See *Order Approving Proposed Settlements* issued July 30, 1962 in *Texaco Inc., et al.*, Docket No. G–13169, *et al.*, 28 FPC 247.

[3] All volumes stated at 15.025 psia.

[4] The 1.625¢ per Mcf escrow arrangement applies to all gas delivered under Tenneco's Rate Schedule No. 29 after July 31, 1960. For gas taken from November 18, 1959, to July 31, 1960 the amount which Transco will pay to the escrow agent will be 1.5375¢ per Mcf representing the difference between the contractual tax reimbursement of 1.8¢ per Mcf and 0.2625¢ per Mcf which Tenneco received for royalties in lieu of taxes.

contingency of the Block 40 Field being finally adjudicated as lying within the taxing jurisdiction of the State of Louisiana.[5] The settlement rate in Docket No. CP60–6 is 19¢ per Mcf.

(3) An extension of the make-up period under Tenneco's Rate Schedule No. 29 for gas paid for but not taken from 24 months to 48 months.[6]

(4) Refunds for the difference between the rate per Mcf paid by Transco for gas not taken under Tenneco's Rate Schedule No. 44 and the settlement rate of 19¢.

(5) An adjustment in rates, upward or downward, according to any specifically applicable area rate or rates determined in the South Louisiana Area Rate Proceeding, Docket No. AR61–2.

(6) Interest at 6% per annum upon amounts to be refunded will be paid for gas delivered before March 1, 1960, and at 7% per annum for gas delivered after that date. No interest will accrue after March 31, 1963, the last day of the month in which the settlement proposal was filed.

As noted above, the proposal provides for the establishing of an escrow account by Transco similar to the account previously established by Transco and approved by us in our *Socony Mobil Oil Co.*, Order issued August 24, 1962, *supra*. Accordingly, we shall require Transco to comply with the same reporting provisions as ordering paragraph (J) of that order with respect to the amounts placed in escrow under the terms of the instant proposal.

It appears that Tenneco's Rate Schedule No. 29 does not include the instrument or instruments whereby TGT acquired the acreage from Phillips therein covered. We shall order Tenneco to so supplement its Rate Schedule No. 29.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seeks to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order. However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

The Commission finds:

(1) Tenneco Corporation is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Tenneco is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

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[5] Similar provisions were approved by the Commission in *Socony Mobile Oil Company, et al.*, Docket No. G–13746, *et al.*, Order issued August 24, 1962, 28 FPC 357.

[6] Rate Schedule No. 44, provides for a 5-year make-up period.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) No party opposes the waiver of the intermediate decision in these proceedings.

The Commission orders:

(A) The motion for waiver of the intermediate decision procedure is granted.

(B) Certificates of public convenience and necessity are hereby issued upon the conditions set forth herein to Tenneco Corporation for the sale of natural gas in interstate commerce for resale as proposed, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in Tenneco's applications herein.

(C) The certificates issued by paragraph (B) above, are granted upon the express condition that Tenneco comply fully with the terms of the settlement proposal referred to above and which was entered into evidence in this proceeding, which settlement is expressly approved, as conditioned herein.

(D) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposals, Tenneco shall report to the Commission, in writing, the amount of the refunds made to its purchaser, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with releases from the purchaser showing receipt of the refunds in conformity to the settlement as approved.

(E) Upon full compliance of Tenneco with all the terms of this order and of the settlement proposals, Tenneco shall be relieved of any further refund obligations in these proceedings and said proceedings shall terminate.

(F) The certificates herein issued are not transferable and shall be effective only so long as Tenneco continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(G) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *provided, however,* that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(H) The grant of certificates herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Tenneco particularly any proceeding under Section 5 of the Natural Gas Act or Section 5(c) of the Outer Continental Shelf Lands Act and is without prejudice to claim or contentions which may be made by the Commission, Applicant, the Commission staff, or any affected party herein in any other proceeding.

(I) Tenneco's F.P.C. Gas Rate Schedule No. 29 is hereby accepted for filing effective as of May 15, 1959. Tenneco shall file as a supplement to its Rate Schedule No. 29 within 30 days of the date of this order copies of the instruments by which TGT acquired from Phillips the property covered by said Rate

Schedule No. 29. The 30 day notice requirements of Section 154.92(b) are hereby waived insofar as they apply to such filing.

(J) Within 30 days after it has executed an agreement with an escrow agent, pursuant to this order, Transco shall file with the Commission a conformed copy of such agreement and a special report of the amounts paid into escrow. Each year thereafter and until the escrow agreement terminates, Transco shall file contemporaneously with its Form 2 Annual Report a report of the amounts in the escrow account as of the last day of the reporting year. In addition, whenever the escrow agent pays out monies from the escrow account, Transco shall file a special report of the principal and interest so paid out, the reason for such payments, and the manner of distribution and basis therefor. Whenever the escrow agent pays out monies to Transco's customers, Transco shall serve a copy of its special report on each interested State Commission. All filings and reports required by this paragraph shall be made by a responsible corporate official, in Docket No. RP63–3 and shall include a statement of the amounts attributable to each rate schedule and field.

(K) The Commission's order of May 1, 1963, in *Tenneco Corporation, et al.*, Docket No. G–18980, *et al.*, 29 FPC 874, is hereby vacated insofar as it concerns Tenneco.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.; UNION OIL COMPANY OF CALIFORNIA, DOCKET NOS. G–17010, G–19333, G–19682, G–20568, CI61–165, CI61–166, CI61–331, CI62–806, AND CI62–822; UNION OIL COMPANY OF CALIFORNIA (OPERATOR), ET AL., DOCKET NO. CI62–1120; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. RP63–3

ORDER GRANTING MOTION FOR RECONSIDERATION, CONDITIONALLY APPROVING PROPOSED SETTLEMENT, CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, AND IMPOSING REPORTING REQUIREMENTS

(Issued June 24, 1963)

These matters are before us on a motion for reconsideration filed by Union Oil Company of California (Union) on May 22, 1963, and supplemented on June 3, 1963, of our order rejecting settlement proposals.[1] By order issued April 11, 1963, we severed the above-captioned Union proceedings from the consolidated proceeding, Union Texas Petroleum, *et al.* Docket No. G–13221, *et al.* and fixed April 23, 1963, as the date for an abridged hearing on the settlement proposal. At the hearing, Memphis Light Gas and Water Division (Memphis) [2] and the Pennsylvania Public Utility Commission (Pennsylvania) entered objections to the settlement proposal. Upon conclusion of the hearing, the Examiner referred the matter to us and, without passing on the merits of the proposal but because of the disagreement among the parties, we issued an order on May 1, 1963, rejecting the settlement proposal and reconsolidating the Union matters with the matters in Union Texas Petroleum, *et al.* Docket No. G–13221, *et al.*

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[1] *Tenneco Corporation, et al.*, Docket No. G–18980 *et al.* Order Rejecting Settlement Proposals and Consolidating Proceedings, issued May 1, 1963, 29 FPC 874.

[2] Memphis filed a written objection on April 22, 1963.

On May 31, 1963, Memphis filed a withdrawal of its opposition to the settlement proposal of Union.[3] Pennsylvania, on June 10, 1963, filed a withdrawal of its opposition to Union's settlement proposal.

Since we consider the settlement proposal to be in the public interest and in view of the changed circumstances, we shall grant Union's motion for reconsideration, vacate our order rejecting the settlement proposal and reconsolidating the Union proceedings, with Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, insofar as the order concerned Union, and issue certificates as conditioned below.

Each of Union's dockets herein concerns an application for a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act (Act) or an application to amend a certificate by adding acreage. These dockets were consolidated for hearing by orders issued December 31, 1962, and January 22, 1963, and the Notice of the Secretary of February 7, 1963, in Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*[4]

Union's settlement proposal is similar except for minor modifications to those heretofore approved by the Commission.[5] The terms include the following:

(1) From January 1, 1963, to December 31, 1967, inclusive, (the moratorium period) the rates shall be:

(a) 19¢ per Mcf,[6] (inclusive of reimbursement of payments required under Section 6(a)(9) of the Outer Continental Shelf Lands Act)[7] with respect to Union's Rate Schedule No. 63 (Docket No. CI62–1120), which concerns sales in the Federal Domain.

(b) 20.625¢ per Mcf (inclusive of applicable tax reimbursement) with respect to Union's Rate Schedules Nos. 62 (Docket No. CI62–822), 35[8] (Docket No. G–17010), 13 (Docket No. G–20568), 59 (Docket No. CI61–165), 60 (Docket No. CI61–166), 39 (Docket No. G–19333), 44 (Docket No. G–19682), and 61 (Docket No. CI62–806), which concern sales from leases located within the taxing jurisdiction of the State of Louisiana.

(c) 20.625¢ per Mcf inclusive of reimbursement for Louisiana taxes or 19¢ per Mcf inclusive of payments under the Outer Continental Shelf Lands Act with respect to Union's Rate Schedule No. 52 (Docket No. CI61–331), for which the settlement rate is dependent upon the final determination of mineral ownership and tax jurisdiction. An escrow account will be maintained for tax reimbursements from Transcontinental Gas Pipe Line Corporation (Transco) the purchaser, until such time as the taxing jurisdiction is finally determined. This escrow plan is similar to that approved by us on August 24, 1962, by order issued in *Socony Mobil Oil Company, et al.*, Docket No. G–13746, *et al.*, 28 FPC 357.

(2) The settlement price established will not be subject to upward or downward adjustment during the moratorium period except:

(a) To reflect the applicable area rate or rates determined in the South Louisiana Area Rate Proceeding, Docket No. AR61–2, *et al.*, or

(b) To reimburse Union for one-half of any tax levied by the United States for which Union is obligated.

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[3] Memphis' withdrawal of opposition also concerned other settlement proposals not here under consideration.

[4] The appendices attached to those orders and that notice contain summaries of each application herein.

[5] See our order approving settlement issued July 30, 1962, in *Texaco, Inc., et al.*, Docket No. G–13169 *et al.*, 28 FPC 247.

[6] All volumes expressed at 15.025 psia.

[7] 67 Stat. 462.

[8] Tentative designation-sales are being made under Atlantic Refining Company's F.P.C. Rate Schedule No. 155.

(3) Extension of the make-up period accorded for gas paid for but not taken to a period of four years in each docket in which a lesser make-up period is provided in the contracts.

(4) Union will refund to the pipeline purchasers two-thirds of the difference between the rates actually collected and the settlement rates from the time of initial delivery to December 31, 1962. The two-thirds refund calculations will be made in a manner similar to that approved by us in the *Texaco Inc., et al.* order issued July 30, 1962, 28 FPC 247. However, December 31, 1962, will be the starting point for the regressive calculation herein. Interest on this amount will be computed at the rate of 6% per annum for deliveries prior to March 1, 1960 and at 7% per annum for deliveries thereafter. Union has agreed to pay full refunds for the difference between the settlement rate and the rates actually collected for deliveries after December 31, 1962. Union does not propose to pay interest on this latter amount.

(5) In addition to the refunds received from Union, Transco has agreed to refund to certain of its customers 0.425¢ per Mcf times the volumes used in computing the amount to be placed in escrow for possible future tax payments plus 0.425¢ per Mcf times the volumes delivered after December 31, 1962 until the date that Union's reduced rate under Rate Schedule No. 52 becomes effective.

As noted above, the proposal provides for the establishing of an escrow account by Transco similar to the account previously established by Transco and approved by us in our *Socony Mobil Oil Co.*, order issued August 24, 1962, *supra*. Accordingly, we shall require Transco to comply with the same reporting provisions as ordering paragraph (J) of that order with respect to the amounts placed in escrow under the terms of the instant proposal.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seeks to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order. However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2 *et al.* These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

Docket No. CI62–1120 concerns an application by Union, as operator in the Blocks 35 and 49 fields, South Marsh Island area. Pan American Petroleum Corporation (Pan American) has a 50% interest in the Block 35 acreage and the Pure Oil Company (Pure) has a 50% interest in the Block 49 acreage. Both Pan American and Pure are signatories to the contract with Transco. Although Union's application in Docket No. CI62–1120, states that Union will make all filings for Pan American and Pure, Pan American has its own certificate application pending in Docket No. CI62–1341[9] and has its own rate schedule on file with the Commission.[10] Union, in response to inquiries by our staff, filed on April 22, 1963, a supplement to its motion for approval of settlement agreement stating that Pan American and Pure do not join in Union's settlement proposal in Docket No. CI62–1120. Accordingly, the certificate issued to Union by this order in Docket No. CI62–1120 relates only to Union's share of the sales from the acreage dedicated under the contract filed as Union's rate schedule No. 63.

[9] Temporary authorization granted July 6, 1962.
[10] Pan American F.P.C. Rate Schedule No. 333.

Insofar as the Pan American and Pure interests are concerned, the application remains consolidated for hearing in the Union Texas Petroleum *et al.*, Docket No. G–13221, *et al.*, proceeding and Union's temporary authorization remains in effect as to Pan American's and Pure's interests. Union, as operator, must, of course, continue to comply with the filing requirements of our Regulations.

Union's Rate Schedule No. 35 and supplements 1–5 thereto for the sale proposed in Docket No. G–17010 have never been formally accepted for filing. Accordingly, the order below will provide for such acceptance, effective as of June 1, 1958, the date of acquisition of the subject properties from the Atlantic Refining Company (Atlantic). Further, to avoid ambiguity, we here point out that although Atlantic may have received the amounts paid under its Rate Schedule No. 155 for deliveries subsequent to May 31, 1958, (for the account of Union) Union is responsible for the proper refunds to Transco under the terms of the settlement agreement and this order.

As in *Continental Oil Company*, 29 FPC 887, (order issued May 6, 1963) and other settlement orders we shall require that interest on the refunds continue to accrue until the last day of the month on which the settlement proposal was filed.

The Commission finds:

(1) Union is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Union is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) No party opposes the omission of the intermediate decision procedure in these proceedings.

The Commission orders:

(A) The motion for waiver of the intermediate decision procedure is granted.

(B) Certificates of public convenience and necessity are hereby issued upon the conditions set forth herein to Union for the sale of natural gas in interstate commerce for resale as proposed, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in Union's applications herein and modified by the settlement proposal.

(C) The certificates issued by paragraph (B) above, are granted upon the express condition that Union comply fully with the terms of the settlement proposal referred to above and which was entered into evidence in this proceeding, which settlement is expressly approved, except that interest on the refunds

shall continue to accrue through March 31, 1963, the last day of the month in which the settlement proposal was filed.

(D) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposals, Union shall report to the Commission, in writing, the amount of the refunds made to each purchaser, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with releases from the purchasers showing receipt of the refunds in conformity to the settlement as approved.

(E) Upon full compliance of Union with all the terms of this order and of the settlement proposals, Union shall be relieved of any further refund obligations in these proceedings and said proceedings, except Docket No. CI62–1120, shall terminate.

(F) The certificates herein issued are not transferable and shall be effective only so long as Union continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(G) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *provided, however*, that the 30-day notice provision of Part 154.94 (b) and the detailed submittal requirements of Part 154.94 (f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(H) The grant of certificates herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Union particularly any proceeding under Section 5 of the Natural Gas Act or Section 5(c) of the Outer Continental Shelf Lands Act and is without prejuidce to claims or contentions which may be made by the Commission, Applicant, the Commission staff, or any affected partly herein in any other proceeding.

(I) Union's FPC Gas Rate Schedule No. 35 is hereby accepted for filing effective as of June 1, 1958.

(J) Within 30 days after it has executed an agreement with an escrow agent, pursuant to this order, Transco shall file with the Commission a conformed copy of such agreement and a special report of the amounts paid into escrow. Each year thereafter and until the escrow agreement terminates, Transco shall file contemporaneously with its Form 2 Annual Report a report of the amounts in the escrow account as of the last day of the reporting year. In addition, whenever the escrow agent pays out monies from the escrow account, Transco shall file a special report of the principal and interest so paid out, the reason for such payments, and the manner of distribution and basis therefor. Whenever the escrow agent pays out monies to Transco's customers, Transco shall serve a copy of its special report on each interested State Commission. All filings and reports required by this paragraph shall be made by a responsible corporate official, in Docket No. RP63–3 and shall include a statement of the amounts attributable to each rate schedule and field.

(K) The Commission's order of May 1, 1963 in *Tenneco Corporation, et al.* Docket No. G–18980, *et al.*, 29 FPC 874, rejecting settlement proposals and consolidating proceedings is hereby vacated insofar as it concerns Union: *provided, however*, that Docket No. CI62–1120 insofar as it concerns sales by Pan American and Pure remains consolidated for hearing in Union Texas Petroleum, *et al.* Docket No. G–13221, *et al.*

737–369—64——84

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

VALLEY GAS, INC., DOCKET NO. CP63-198

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued June 24, 1963)

On January 11, 1963, as supplemented on March 18, 1963, Valley Gas, Inc. (Applicant) filed in Docket No. CP63-198 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Texas Gas Transmission Corporation (Texas Gas) to establish physical connection of its transmission facilities with the proposed facilities of and to sell natural gas to Applicant for resale and distribution in Irvington, Kentucky, and environs, all as more fully set forth in the application, as supplemented.

Applicant proposes to construct and operate a lateral transmission line connecting Texas Gas' main transmission line with Irvington. Applicant will also construct and operate the distribution facilities necessary to provide the subject service.

The application shows Applicant's estimated third year peak day and annual natural gas requirements to be 578 Mcf and 48,246 Mcf, respectively.

The total estimated cost of transmission and distribution facilities for the project is $134,000, which cost will be financed by a loan from the Small Business Administration, local bank loans and the sale of equity securities.

The application indicates that Applicant has received appropriate authorization from the Public Service Commission of Kentucky and a franchise from Irvington.

On February 8, 1963, Texas Gas filed an answer to the subject application stating that it did not object to rendering the requested service.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on May 21, 1963, (28 F.R. 5070). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order, issued March 30, 1949, in Docket No. G-859 (8 FPC 190).

(2) Applicant, Valley Gas, Inc., is a public utility duly organized and existing under the laws of the Commonwealth of Kentucky and is authorized to engage in the business of distributing and selling natural gas within said Commonwealth.

(3) It is necessary and desirable in the public interest that Texas Gas be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 578 Mcf of natural gas per day to Applicant, as set forth in the application, as supplemented, and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Texas Gas within one year from the date of issuance of this order.

(5) The requirement that Texas Gas serve Applicant, as proposed, will not place any undue burden upon Texas Gas nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Texas Gas Transmission Corporation be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 578 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully set forth in the application, as supplemented.

(B) Applicant shall be prepared to receive natural gas from Texas Gas within one year from the date of issuance of this order.

(C) Texas Gas shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

ALABAMA POWER COMPANY, PROJECT NO. 2165

ORDER APPROVING PROJECT EXHIBITS AND ADJUSTING ANNUAL CHARGES

(Issued June 25, 1963)

On April 9, 1962, Alabama Power Company, licensee for Project No. 2165, filed for Commission approval Exhibit K maps (Revision No. 2), an Exhibit F map, and an Exhibit F (Revision No. 2) comprising 28 typewritten pages. On April 1, 1963, the licensee filed a revised page 26 of the Exhibit F (Revision No. 2) filed April 9, 1962.

The Exhibit K and F maps show the project boundary as finally established. The effects of approval of the exhibits will be: to establish in the license the corrected project boundary; to include in the license certain additional lands of the United States (12.44 acres) [1] affected by the Lewis Smith reservoir and power plant; and to provide for an increase in the license of the amount of annual charges for the occupancy of such lands from $5,358.00 to $5,382.88.

The Commission finds:

(1) The aforementioned Exhibit K and Exhibit F maps conform to the Commission's rules and regulations and should be approved as part of the license for the project, and Exhibit K (FPC No. 2165—49 through 69 (now part of the license and which has been superseded, should be eliminated from the license.

(2) The increased amount of annual charges for recompensing the United States for the occupancy of additional lands of the United States is reasonable as hereinafter fixed and specified.

The Commission orders:

(A) Exhibit K maps (FPC No. 2165—71 through 92) and Exhibit F map (FPC No. 2165—70) entitled "Parcel #587, Mineral Lands Subject to Flood" are hereby approved as part of the license for Project No. 2165, and superseded Exhibit K (FPC No. 2165—49 through 69) is hereby eliminated from the license for the project.

(B) Subparagraph (ii) of Article 42 of the license is hereby amended by changing the amount of annual charges for the occupancy of lands of the United States by the project from $5,358.00 to $5,382.88, effective as of September 1, 1957.

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[1] These lands should have been included in the license from the date of its issuance, namely, September 1, 1957, but the total lands of the United States to be included in the license was then in question [18 FPC 327].

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of its issuance.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NIAGARA MOHAWK POWER CORPORATION, PROJECT NO. 2318

ORDER ISSUING LICENSE (MAJOR)

(Issued June 25, 1963)

Application was filed on July 20, 1962 by Niagara Mohawk Power Corporation (Applicant) of Syracuse, New York, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2318, located on the Sacandaga River in the vicinity of the villages of Hadley and Conklingville, Saratoga County, New York.

The project, known as the E. J. West Plant, which is located about 6 miles upstream from the confluence of the Sacandaga and Hudson Rivers, commenced operation in 1930. The powerhouse contains two 14,000 horsepower turbines each connected to a generator of 10,000 kilowatt capacity. Power developed by the project is integrated into Applicant's transmission system for ultimate delivery to its customers.

In Docket No. DI–177, New York Power and Light Corp. (8 FPC 231–250), the Commission, on April 18, 1949, found, among other things, that the Sacandaga River is a navigable water of the United States from Northville, at the head of the Conklingville Reservoir, to its mouth at Hadley. In accordance with the criteria set forth in the Commission's Opinion 357, issued April 25, 1962,[1] we are making the effective date of this license April 1, 1949, the first of the month in which we determined the Sacandaga River to be a navigable water, and the termination date December 31, 1993.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, advised that the plans of the project structures are satisfactory insofar as the interests of navigation are concerned; that special terms and conditions in the interest of navigation are not considered necessary; and that the tracings of the project structures affecting navigation have been approved pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, advised that according to the Fish and Wildlife Service, the project has no significant effect on fish and wildlife resources and that no special license conditions for the protection of such resources are necessary, and that other interests of the Department are not adversely affected.

Although invited to do so, no reports on the application have been received from any New York State agencies.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of New York and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purpose of a license for the project.

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[1] *Public Service Company of New Hampshire*, Project No. 2288 (27 FPC 830, 839).

(2) No conflicting application is before the Commission. Public notice of the filing of the application has been given as required by the Act. No protests have been received.

(3) The issuance of a license as hereinafter provided will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(4) The project is best adapted to a comprehensive plan for improving and developing the Sacandaga River for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, upon the terms and conditions hereinafter imposed.

(5) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 27,000 horsepower, and the amount of such charges, based upon such capacity, is reasonable as hereinafter fixed and specified.

(6) The exhibits hereinafter designated and described in ordering paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Niagara Mohawk Corporation (Licensee) under Section 4(e) of the Federal Power Act (Act) for a period effective as of Arpil 1, 1949 and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2318, located on the Sacandaga River, a navigable water of the United States, in Saratoga County, New York, subject to the terms and conditions of the Act, which is incorporated herein by reference, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Constructed Project No. 2318[2] consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purpose of the project, whether such lands or interests therein are owned or held by the applicant or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2318–1) General Location Plan.

Exhibit K: (FPC No. 2318–2) Detail Map.

(ii) The project consists of an intake structure with tractor type headgates located at the downstream end of the spillway channel of the Conklingville Dam, of the Hudson River-Black River Regulating District of the State of New York; four concrete penstocks, two for each unit; a powerhouse located 600 feet downstream containing two 14,000 horsepower turbines each connected to a generator of 10,000 kw capacity; tailrace and other necessary appurtenances; the location, nature and character of which are more specifically shown and described by the exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: (FPC No. 2318-3) Plan and Sections.

Exhibit M: Four typewritten sheets, entitled, "Exhibit "M", giving a general description of mechanical and electrical equipment.

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[2] We are not licensing as a part of the subject project the Sacandaga Reservoir from which Applicant takes water under a contractual arrangement with its owner, the Hudson River-Black River Regulation District of the State of New York, nor did Applicant include such reservoir in its application for license.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or posession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3, December 15, 1953, entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States (17 FPC 385–389), which terms and conditions, designated as Articles 1 through 17, are attached hereto and made a part hereof, except for Articles 7, 12 and the last sentence of Article 11; and subject to the following special conditions set forth herein as additional articles:

Article 18. Whenever the United States shall desire, in connection with the project, to construct fish handling facilities or to improve the existing fish handling facilities at its expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such fish handling facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be prescribed by the Commission, consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish handling facilities constructed or improved by the United States under the provision of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish handling facilities or to relieve the Licensee of any obligation under this license.

Article 19. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 20. The Licensee shall install additional capacity and make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 21. The Licensee shall pay to the United States the following annual charges:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, one (1) cent on the authorized installed capacity (27,000 horsepower) plus two and one-half (2½) cents per 1,000 kilowatt-hours of gross energy generated during the calendar year for which the charge is made; or such other amounts as may hereafter be determined as necessary to reimburse the United States for the costs of administration.

Article 22. The Licensee shall for the protection of navigation, construct, maintain, and operate at its own expense such lights and other signals of fixed project structures in or over navigable waters of the United States as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 23. The Commission reserves the right to determine at a later date what transmission facilities, if any, should be included in the license as part of the project works.

Article 24. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount; Provided, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property, and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by license.

Article 25. The Licensee shall within one year from the date of issuance of this license, file with the Commission a recreational use plan for the project which shall include not only recreational improvements which may be provided by others, but the recreational improvements the Licensee plans to provide.

(D) The exhibits designated and described in Paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313 (a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NORTHERN LIGHTS, INCORPORATED, PROJECT NO. 2141

ORDER PERMITTING WITHDRAWAL OF APPLICATION FOR LICENSE (MAJOR) AND TERMINATING PROCEEDING

(Issued June 25, 1963)

Application was filed on May 2, 1963, by Northern Lights, Incorporated (Applicant) of Sandpoint, Idaho, for Commission permission to withdraw its application for license filed on April 16, 1957 for Project No. 2141 then proposed to be located on Priest River and Priest Lake, in Bonner County, Idaho, and affecting lands of the United States within the Kaniksu National Forest. The project proposed would have been a 4,250 kilowatt hydroelectric development.

Applicant states that "since there is presently not a permanent solution to the problem of payment for upstream storage by Federal projects, plus the uncertainty of the Canadian Treaty, we cannot determine the feasibility of our project at this time." Applicant further states that it may submit another application for license for the same project sometime in the future, should conditions become more favorable.

The Commission finds:

In the circumstances recited herein, it is appropriate to permit the withdrawal of the application for license for Project No. 2141.

The Commission orders:

Permission to withdraw the aforesaid application is hereby granted, without prejudice to the filing by Applicant of a new application for license, and this proceeding is hereby closed.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PENNSYLVANIA POWER & LIGHT COMPANY, PROJECT NO. 2268

ORDER DENYING APPLICATION FOR REHEARING

(Issued June 25, 1963)

The Commission, by Opinion No. 380 and Order issued on March 13, 1963, 29 FPC 468, in the above matter, denied a request for a new 50-year license covering the present Holtwood Project, but found "(2) It would be in the public interest to permit an amendment of the existing license for Holtwood Project No. 1881 to permit the proposed changes and additions."

Pennsylvania Power & Light Company (PP&L) filed on April 11, 1963, an application for rehearing with respect to finding No. 2 above. In its application, and in a supplementary supporting memorandum which was filed on April 26, 1963, PP&L urges that if the existing license is not to be extended, it will terminate in 1970; therefore, PP&L argues that the "reconstructed" project provided by an amendment to the existing license would not be in existence long enough to be economically feasible. In addition, PP&L now argues that it would not have use before 1970 for the additional capacity to be provided by the contemplated amendment. In its original brief, PP&L had urged that it would have use for this additional capacity.

In its original application herein, PP&L advanced a number of reasons why the proposed reconstruction was in the public interest. These include:

> The reconstruction will provide a new increase of 40,000 kw in capacity or a 40% increase in the present effective capacity of 100,000 kw which is also the ultimate capacity under the present license.
>
> The average annual output will be increased 181 million kwh from 585 to 766 million kwh or about 30%.
>
> The river flow utilized at full load discharge will be increased from 32,000 to 39,000 cfs or about 20%.
>
> There will be such additional service reliability improvements as are inherent in the quick-starting ability of hydro-electric generation.
>
> The recreation value of the Holtwood pond to the thousands of persons living within and without Applicant's service territory who make use of the pond will be improved because of the better control of water levels which will result from the installation of the adjustable flood gate. With the flood gate there will be fewer occasions of flashboard failure and resulting sudden drop in pond level, and, for a considerable range in the flow of the river, river flow will have much less effect on pond level.

In our opinion and order issued herein on March 13, 1963, we rejected the contention of PP&L that its proposed changes and additions at the Holtwood project would be of sufficient magnitude to constitute a "new" project; the proposed "redevelopment" would not have superseded the project works of Project No. 1881. We concluded that, if it were possible to grant a new license for a 50-year period, it would have to involve factual situations markedly dif-

ferent from those presented here. *Cf.* licenses of *Nevada Irrigation District*, Project No. 2266, *supra*, p. 1256, and *Pacific Gas and Electric Company*, Project No. 2310, *supra*, p. 1265, both issued June 24, 1963, in which the Commission accepted the surrender of minor part licenses in which the project works were not subject to recapture while issuing major licenses including the existing project works of such minor part licenses. We further found the changes and additions proposed by PP&L would be in the public interest and that if PP&L desires to go forward with this project it could do so by obtaining an amendment to the existing license for Project No. 1881.

PP&L now urges that our finding No. 2 should be deleted inasmuch as it might be interpreted to mean that the Commission considers that the public interest requires the proposed reconstruction under the existing license, whereas PP&L urges that it would not be in the public interest, since in its judgment its financial resources could be better utilized through other types of power expansion than by investment in a project modification subject to early recapture. The fact that additional construction must be undertaken near the end of the license period, and so may be subject to recapture when the license expires, does not, however, reduce the public interest in the contemplated project resulting from factors such as those quoted above from PP&L's application. Our conclusion in this respect is strengthened by the not ungenerous statutory provisions for payment of damages or restoration of investment upon recapture. The judgment whether or not to go ahead is of course PP&L's, but we cannot say the proposal is not in the public interest merely because PP&L may feel it has superior alternatives to meet its over-all objectives.

The Commission further finds:

The assignments of error and grounds for rehearing set forth in the application for rehearing filed by PP&L on April 11, 1963, as supplemented, of the Commission's Opinion No. 380 and accompanying order issued herein on March 13, 1963, present no facts or principles of law which were not considered by the Commission when it issued its aforesaid Opinion, or which having now been considered warrant any change in or modification of the said Opinion and order.

The Commission orders:

Pennsylvania Power & Light Company's application filed on April 11, 1963, as supplemented, for rehearing of the Commission's Opinion No. 380 and accompanying order issued herein on March 13, 1963, is denied.

OPINION NO. 392

SUNRAY DX OIL COMPANY (FORMERLY SUNRAY MID-CONTINENT OIL COMPANY), DOCKET NO. CI61-1153

MEMORANDUM OPINION AND ORDER DECLARING THAT SUNRAY DX OIL COMPANY HAS BEEN SELLING NATURAL GAS UNDER A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY ISSUED TO IT IN DOCKET NO. G-12113 AND ORDERING REFUNDS

(Issued June 26, 1963)

Syllabus

1. Commission *reaffirms* position that instant gas sales have been made under terms of certificate issued in 1957—rejecting producer's attempt to disown certificate. P. 1296.

2. Right to reject certificate order exists under Natural Gas Act, *provided* service has not commenced. P. 1297.
3. Conceding that mere filing of application does not constitute dedication of gas to interstate market, Commission *states* producer's commencement of service under temporary authorization constituted such dedication—requiring approval of abandonment. P. 1297.
4. Producer having never attempted to withdraw or change filed initial rate, Commission *orders* refunds of amounts collected in excess thereof. PP. 1298–1299.
5. In proceeding initiated under Section 1.7(c) of its Rules, Commission *declares* producer was issued permanent certificate of public convenience and necessity and has been selling gas under said certificate. P. 1299.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

On January 30, 1961, Sunray Mid-Continent Oil Company[1] (Sunray) filed a Petition For Declaratory Order declaring that Sunray's sale of natural gas to El Paso Natural Gas Company (El Paso) certified in Docket No. G–12113 was terminated on September 9, 1957 and that, since that time, sales of Sunray's gas from the properties involved in that docket have been made by the operators of the properties[2] under their rate schedules. The Petition For Declaratory Order is the latest effort by Sunray to avoid a certificate of public convenience and necessity which Sunray has been at times attempting to avoid and at other times attempting to have modified since September 9, 1957. Once again, we reaffirm our position that the sales involved in this docket have been made under the terms of a certificate of public convenience and necessity issued to Sunray on August 9, 1957, and Sunray should make refunds plus interest to El Paso for all sums collected in excess of those which it could have collected under this certificate.

On June 21, 1957, temporary authorization was granted to Sunray to make the sales involved in Docket No. G–12113 and Sunray, on August 6, 1957, notified the Commission that first deliveries had commenced. On August 9, 1957, the permanent certificate was granted to Sunray and it contained the following ordering paragraph, routinely inserted in orders in dockets where there had been no temporary authorization:

> (C) The certificates issued herein shall be deemed accepted and of full force and effect, unless refused in writing and under oath by Applicants within 30 days from issuance of this order.

Sunray purportedly rejected the permanent certificate on September 9, 1957, because the certificate did not specify whether it is to last for the contract period or whether it is to exist for an indefinite period. The purported rejection of the certificate by Sunray brought to our attention the inadvertent routine language which seemingly invited rejection and we ordered that "[t]he portion of the order issuing an unlimited certificate of public convenience and necessity in Docket No. G–12113 be reconsidered."[3]

The order granting Sunray's certificate was heard in the consolidated proceedings styled as *Sunray Mid-Continent Oil Company*, Docket No. G–2975, *et al.* and on December 15, 1958 we issued an "Order Modifying and Adopting As Modified

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[1] By order issued July 17, 1962, Sunray DX Oil Company was substituted as certificate holder in Docket No. G–12113 (*Sunray DX Oil Co.*, 28 FPC 171).

[2] Union Texas Petroleum, A division of Allied Chemical Corporation (formerly Anderson-Prichard Oil Corporation) and Socony Mobil Oil Company (Operator) (formerly Magnolia Petroleum Company).

[3] *Sunray Mid-Continent Oil Co.*, Docket No. G–11661, *et al.*, "Order Severing Proceedings and Continuing Date of Hearing" issued September 27, 1957.

Presiding Examiner's Initial Decision"[4] which adopted a finding by the Presiding Examiner that Sunray be issued a certificate of public convenience and necessity (in Docket No. G–12113 and in other dockets) unlimited as to time. On January 12, 1959 Sunray filed an application for rehearing in this proceeding which was denied by us by order issued February 11, 1959. On April 10, 1959 Sunray filed "Petition For Review and To Modify An Order Of The Federal Power Commission" in the United States Circuit Court of Appeals for the Tenth Circuit. In that petition, Sunray contended that the certificate granted in Docket No. G–12113 should be conditioned to run for a limited period of time. Pursuant to stipulation by the parties, that petition to review was dismissed by the Court on October 24, 1960.

In its petition for a declaratory order Sunray makes the following contentions: (1) Sunray had a right to reject the certificate, (2) the temporary expired with Sunray's rejection, and (3) the purported issuance of a certificate on December 15, 1958 was a nullity because no application for a certificate was pending before the Commission at that time. For the reasons stated below, we find each of these contentions to be without merit.

As noted above, through the inadvertent insertion of routine language in our order of August 9, 1957, we seemingly invited rejection of the certificate issued to Sunray. However, it is clear that the provision in the August 9, 1957 order permitting refusal of the certificate has no legal significance, even if we then intended to permit rejection. Section 7(b) of the Natural Gas Act provides:

> No natural-gas company shall abandon * * * any service * * * without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

Prior to the time that Sunray attempted to reject the certificate, it had commenced service under its temporary authorization and thus had dedicated its gas to interstate commerce. At no time was a hearing held during which Sunray introduced any evidence that would justify our permitting an abandonment of service.

Sunray unconvincingly argues that the right to reject a certificate order exists under the Natural Gas Act, quoting language from *Atlantic Refining Co.* v. *PSC*, 360 U.S. 378, for the proposition that the filing of an application for a certificate does not constitute a dedication of gas to the interstate market. We do not dispute this proposition, but we do find that it is inapposite to the situation confronting us. In the instant case there was more than the mere filing of an application for a certificate; there was a commencement of service in interstate commerce under temporary authority granted by us. It was this commencement of service that constituted dedication to interstate commerce and that requires our permission and approval of any abandonment of service.[5]

Sunray's other major contention is that our action in issuing a second certificate of public convenience and necessity to Sunray in Docket No. G–12113[6] is a nullity. Sunray maintains that, since no application for a certificate was on file, we could not issue a certificate. Since an application was on file, *i.e.*,

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[4] *Sunray Mid-Continent Oil Co.*, 20 FPC 824.

[5] Sunray, in its second argument, contends that the temporary authorization it received expired on September 9, 1957, the date Sunray purported to reject the permanent certificate. Since we have determined that a valid, effective certificate of public convenience and necessity was issued to Sunray on August 9, 1957, it is unnecessary to decide when, or if, temporary authorization would terminate under other circumstances.

[6] *Sunray Mid-Continent Oil Co.*, 20 FPC 824.

in Docket No. G–12113, this argument has no validity. Sunray erroneously believes that its rejection of a certificate terminated its application. However, on September 27, 1957, we ordered our reconsideration of that portion of our earlier order issuing the unlimited certificate of public convenience and necessity. Obviously, we treated Sunray's rejection as a request for rehearing of the part of the first order which Sunray found objectionable. This ordering of reconsideration occurred well within the 30 days required by Section 19(a) of the Natural Gas Act.

Even if this last argument that the second certificate issued was a nullity because no application was on file has validity, Sunray is precluded from advancing it. Similar arguments were made by Sunray to the Presiding Examiner [7] and to the Commission [8] and in both circumstances affirmative action was taken in granting certificates.[9] After the second certificate issued, Sunray abandoned its argument that no certificate issued but, rather, argued that the certificate should be modified to be limited in time to the terms of the contract. This latter position was advanced in Sunray's application for rehearing [10] and in its petition to the Circuit Court.[11] Sunray went so far as to make the following statement:

> * * * it is mandatory under Section 7(e) of the Natural Gas Act that the Commission issue this applicant a certificate "authorizing the whole . . . of the . . . sale covered by the *application*" * * * [emphasis supplied] [12]

It is clear that Sunray's failure to prosecute this contention in its application for rehearing and in its petition to the Circuit Court bars it from now raising the issue.

Even if we were to agree with Sunray as to each of its contentions discussed above, it would still be necessary for us to order the refund in question here. From the time of the first delivery under temporary authorization, there has been but one rate schedule on file with the Commission under which these sales can be made—Sunray's Rate Schedule 133 providing for a price of 7 cents per Mcf. Sunray has never attempted to withdraw or change that rate schedule and it must be deemed applicable because of the following provision of Section 4(d) of the Natural Gas Act:

> (d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service * * * except after thirty days notice to the Commission and to the public * * * [13]

There is yet another of our orders which is pertinent to Docket No. G–12113. On June 4, 1962, there was filed "Petition of Sunray DX Oil Company To Amend Style Of Proceedings" in which Sunray DX Oil Company requested to be substituted as applicant and certificate holder in many dockets in place of Sunray Mid-Continent Oil Company. Although Docket No. G–12113 was not included among those dockets sought to be changed, our order amending applications

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[7] *Sunray Mid-Continent Oil Co.*, Docket No. G–2975, *et al.*, "Brief to the Presiding Examiner on Behalf of Sunray Mid-Continent Oil Co." filed on April 2, 1958 at p. 7.

[8] *Sunray Mid-Continent Oil Co.*, Docket No. G–2975, *et al.*, "Exceptions of Sunray Mid-Continent Oil Company to The Initial Decision of the Presiding Examiner" filed August 22, 1958 at p. 31.

[9] *Sunray Mid-Continent Oil Co.*, 20 FPC 824.

[10] *Sunray Mid-Continent Oil Co.*, Docket No. G–2975, *et al.*, "Application for Rehearing" filed on January 12, 1959.

[11] "Petition for Review and To Modify an Order of the Federal Power Commission" filed on April 10, 1959 in CA10, No. 6142.

[12] *Sunray Mid-Continent Oil Co.*, Docket No. G–2975, *et al.*, "Application for Rehearing" filed on January 12, 1959 at p. 7.

[13] See *Sunray Mid-Continent Oil Co.* v. *F.P.C.*, 364 U.S. 137, 155–56 and *Pennsylvania Water Co.* v. *F.P.C.* 343 U.S. 414, 421–24.

and certificates did include Docket No. G–12113 as an outstanding certificate of public convenience and necessity in which Sunray DX Oil Company was substituted for Sunray Mid-Continent Oil Company as the certificate holder. *Sunray DX Oil Company*, 28 FPC 171. Sunray never requested rehearing or reconsideration of that order.

The Commission orders:

(A) A permanent certificate of public convenience and necessity was issued to Sunray Mid-Continent Oil Company in Docket No. G–12113 on August 9, 1957.

(B) Within 90 days from the date of this order, Sunray DX Oil Company shall (1) refund all amounts collected under the sale certificated in Docket No. G–12113 in excess of 7 cents per Mcf together with interest at 6 percent on the excess collected prior to March 1, 1960 and interest at 7 percent on the excess collected thereafter; and (2) report to the Commission in writing the amount of refunds made, showing separately the amount of principal and interest so paid, together with the bases used for such determination.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

NORTHERN UTILITIES, INC., DOCKET NO. RP63–10

ORDER APPROVING RATE SETTLEMENT AGREEMENT AND TERMINATING PROCEEDING

(Issued June 28, 1963)

On June 6, 1963, Northern Utilities Inc. (Northern-Inc) tendered a "Proposal to Settle and Terminate Rate Proceeding" (Proposal) in the above designated proceeding which originated from a tender for filing on February 18, 1963, of proposed First Revised Sheet No. 8 to Northern-Inc's FPC Gas Tariff, Original Volume No. 1. Said filing proposed an increase in rate and charge to Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska) of approximately $225,000 annually. On April 18, 1963, the above-identified tariff sheet was suspended by order of the Commission and provision made for a public hearing concerning the proposed increased rate and charge.

Northern-Inc, the recently organized successor in interest to Northern Utilities Company,[1] in addition to non-jurisdictional operations which account for approximately 96% of its revenues, transports gas in the state of Wyoming for the account of Kansas-Nebraska. The later transports gas for resale in the states of Kansas, Nebraska and Wyoming. Northern-Inc's services to Kansas-Nebraska include the gathering, processing and transportation of gas owned by Kansas-Nebraska.

In support of the proposed increased rate, Northern-Inc stated that its presently effective rate for service to Kansas-Nebraska, averaging approximately 3.25¢ per Mcf, is the same as that charged by its predecessor, Northern Utilities Company, since January 1, 1941; that said rate does not provide Northern-Inc with recovery of its cost of service, including a fair rate of return; that in a related certificate proceeding in Docket No. CP63–74, Northern-Inc reserved the right to file an application for an increase to 7 cents per Mcf.

The staff's field study of Northern-Inc's facilities and operations indicated that

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[1] See Commission order issued December 20, 1962, 28 FPC 1082, in Docket Nos. CP63–74, CP63–76, and CP63–104 entitled, "Findings and Order Issuing Certificates of Public Convenience and Necessity and Permitting and Approving Abandonment of Facilities and Service," for description of acquisitions and distributions of properties related to the service for which the increased rate and charge herein is proposed.

the proposed rate of 7 cents per Mcf for the first 6,000,000 Mcf delivered annually and 4.5 cents per Mcf for the additional annual delivery of 3,000,000 Mcf to Kansas-Nebraska was supported by the Company's cost of service.

By order issued May 2, 1963, Kansas-Nebraska, Western Power & Gas Company, and Northwestern Public Service Company were granted permission to intervene. Twenty-six persons, including customers of Kansas-Nebraska, interveners and State Commissions were invited to attend and participate in settlement conferences commencing on May 6, 1963. The conferences developed the Proposal which is made a part hereof and identified as Appendix A.

The rates and charges contained in Second Revised Sheet No. 8 and Original Sheet No 8–A, Original Volume No. 1 of Northern-Inc's FPC Gas Tariff, as submitted in the Proposal, provide for a rate of 7 cents per Mcf for the first 6,000,000 Mcf delivered during each yearly period begining June 6, 1963, and 4.5 cents per Mcf for volumes delivered to Kansas-Nebraska in excess thereof during each yearly period. The estimated revenue, based on these proposed rates will be, according to the staff's computations, slightly less than the cost of service. By telegrams addressed to the Secretary, all parties of record have agreed to the proposed settlement and on June 6, 1963, the city of Hastings, Nebraska, filed a telegram withdrawing its petition to intervene, Northern-Inc requests the Commission to waive the requirements of the Commission's Regulations, particularly Part 154 thereof (18 CFR, Part 154) to the extent necessary to permit the above-identified tariff sheets contained in the Proposal to become effective on June 6, 1963.

The Commission finds:

(1) The rate and charge contained in Northern-Inc's First Revised Sheet No. 8 to its FPC Gas Tariff, Original Volume No. 1, tendered for filing on February 18, 1963, in this proceeding have not been shown to be just and reasonable or otherwise lawful under the terms and provisions of the Natural Gas Act, and should be disallowed and denied as hereinafter ordered.

(2) The settlement of this proceeding on the basis of the Proposal submitted by Northern-Inc and as contained in Second Revised Sheet No. 8 and Original Sheet No. 8–A to its FPC Gas Tariff is reasonable, proper and in the public interest in carrying out the provisions of the Natural Gas Act, and should be approved and made effective as hereinafter ordered, and this proceeding should be terminated.

(3) The Commission's Regulations, particularly Part 154 thereof (18 CFR, Part 154), should be waived to the extent necessary to permit the above-identified tariff sheets contained in the proposal to become effective on June 6, 1963.

The Commission orders:

(A) The increased rate and charge originally tendered by Northern-Inc as contained in First Revised Sheet No. 8 to its FPC Gas Tariff, Original Volume No. 1, is hereby disallowed and denied.

(B) The Settlement of this proceeding upon the basis of the Proposal (Appendix A hereto) * filed by Northern-Inc on June 6, 1963, is approved and made effective, subject to the terms and conditions hereinafter ordered.

(C) Within fifteen days of the issuance of this order, Northern-Inc shall file, subject to approval of the Commission, revised tariff sheets embodying the rates and provisions contained in its Proposal.

(D) Upon acceptance, and notice to that effect from the Secretary, the tariff sheets referred to in paragraph (C) above shall become effective as of June

*Omitted in printing.

6, 1963, and the requirements of the Commission's Regulations under the Natural Gas Act, particularly Part 154 thereof (18 CFR, Part 154) are hereby waived for that purpose.

(E) Upon full compliance by Northern-Inc with all of the terms and conditions of this order and acceptance of the filings made by it, this proceeding shall be terminated.

(F) This order is without prejudice to any findings or orders which have been or may hereafter be made by the Commission and is without prejudice to any claims or contentions which may be made by the Commission, Northern-Inc, the Commission staff, or any other party affected by this order in any proceeding now pending or hereafter instituted by or against Northern-Inc, or any other companies, persons or parties affected by this order.

APPLICATIONS OF PRODUCERS OF NATURAL GAS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY DISPOSED OF DURING THE PERIOD OF JANUARY 1, 1963 THROUGH JUNE 30, 1963; SERVICE BEGINNING SUBSEQUENT TO JUNE 7, 1954

PRODUCER, DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
A & R Pipe Co.					
CI60-222 Coastal States Gas Producing Co.*	South Heard	Tex	Bee	5 20 63	Iss.
Abel & Bancroft:					
CI63-395 West Lake Natural Gasoline Co.	Nona Lucia	Tex	Nolan	2 27 63	Iss.
M. D. Abel, et al.:					
CI60-850 El Paso Natural Gas Co.	Spraberry	Tex	Upton	5 29 63	Iss.
CI62-675 El Paso Natural Gas Co.	Spraberry Trend	Tex	Reagan	2 27 63	Iss.
CI62-813 El Paso Natural Gas Co.	Spraberry	Tex	Upton*	5 29 63	Iss.
Irvin Abell, Jr., et al.:					
CI63-57 El Paso Natural Gas Co.	Vinegarone	Tex	Val Verde	6 6 63	Iss.
R. H. Adkins:					
CI63-903 Kentucky West Virginia Gas Co.	Little Blain Creek	W. Va	Lawrence	6 18 63	Iss.
Afroma Oil & Gas Co., Inc., Operator, et al.:					
CI63-524 United Gas Pipe Line Co.	Cabeza Creek	Tex	Goliad	5 17 63	Iss.
Robert E. Aikman, et al.:					
CI63-442 Northern Natural Gas Co.	Elwood	Okla	Beaver	2 27 63	Iss.
CI63-443 Northern Natural Gas Co.	Elwood	Okla	Beaver	2 27 63	Iss.
Alleghany Land and Mineral Co.:					
G-8404 Hope Natural Gas Co.	Lee District	W. Va	Calhoun	2 27 63	Iss.
John Allen & Henry Stephens:					
CI62-1290 United Fuel Gas Co.	Johns Creek	Ky	Floyd	5 29 63	Iss.
William E. Allen, et al.:					
CI63-852 Equitable Gas Co	Otter District	W. Va	Braxton	6 26 63	Iss.
William H. Allen, et al.:					
CI63-224 Northern Natural Gas Co.	Cleveland	Tex	Ochiltree	1 21 63	Iss.
Allied Materials Corp.:					
CI63-107 Fort Smith Gas Corp.	Cartersville	Okla	Leflore	1 21 63	Iss.
Amata Gas Corp.:					
CI62-1270 Tennessee Gas Transmission Co.	Six Wells	Tex	Calhoun	5 29 63	Iss.
Amax Petroleum Corp., et al.:					
CI63-642 El Paso Natural Gas Co.	Bar-X Area	Utah*	Grand*	6 6 63	Iss.
Amax Petroleum Corp., Operator, et al.:					
CI63-408 El Paso Natural Gas Co.	Bar-X Unit Area	Colo	Grand*	6 6 63	Iss.
Ambassador Oil Corp.:					
CI61-1779 Transwestern Pipeline Co.	Undesignated	Tex	Lipscomb	6 5 63	Wtd.
Ambassador Oil Corp., Operator, et al.:					
CI62-1243 Arkansas Louisiana Gas Co.	Wilburton*	Okla	Latimer*	6 21 63	Iss.

See footnotes at end of table, p. 1358.

737-309—64——85

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Amerada Petroleum Corp.:					
CI61-1289 Colorado Interstate Gas Co.	S.W. Camp Creek Area.	Okla.	Beaver	6 18 63	Iss.
CI62-1107 El Paso Natural Gas Co.	Ignacio	Colo.	La Plata	4 3 63	Iss.
America Petrofina Co. of Texas:					
CI60-275 El Paso Natural Gas Co.	San Juan Basin	N. Mex.	San Juan	5 20 63	Iss.
CI62-613 Texas Eastern Transmission Corp.	Mercedes	Tex.	Hidalgo	5 17 63	Iss.
Amherst Co.:					
CI63-372 Texas Eastern Transmission Corp.	Bernard Prairie	Tex.	Wharton	2 27 63	Iss.
D. B. Amick, et al.:					
CI63-30 Hope Natural Gas Co.	Spencer District	W. Va.	Roane	2 27 63	Iss.
Amigos Oil & Gas Ventures, Oper., et al.:					
CI61-588 Texas Eastern Transmission Corp.	Carthage	Tex.	Rusk	5 20 63	Iss.
Anadarko Production Co.:					
CI61-543 Panhandle Eastern Pipe Line Co.	Panhandle Tex	Tex.	Moore	5 20 63	Iss.
CI63-1 Colorado Interstate Gas Co.	Mocane	Okla.	Beaver	2 27 63	Iss.
CI63-609 Natural Gas Pipeline Co. of America.	Boyd S. E.	Okla.	Beaver	3 12 63	Iss.
Bruce Anderson, et al.:					
CI63-62 El Paso Natural Gas Co.	Basin Dakota Pool	N. Mex.	San Juan	1 21 63	Iss.
Ann Oil & Gas, Inc.:					
CI63-939 Hope Natural Gas Co.	Center District	W. Va.	Gilmer	6 26 63	Iss.
Apache Transmission Co.:					
G-19687 Cities Service Gas Co.	Perkins	Okla.	Lincoln	5 20 63	Iss.
Appell Petroleum Corp.:					
CI63-707 Valley Gas Transmission, Inc.	Old Refugio	Tex.	Refugio	6 26 63	Iss.
Agnes Cullen Arnold, et al.:					
G-13873 Southern Natural Gas Co.	Tantine	La.	Plaquemines	5 20 63	Iss.
Paul H. Ash:					
CI63-418 Equitable Gas Co.	Buchannon* District.	W. Va.	Upshur*	2 27 63	Iss.
Paul H. Ash, et al.:					
CI62-1123 Equitable Gas Co.	Skin Creek District.	W. Va.	Lewis	4 3 63	Iss.
Ashland Oil & Refining Co.:					
CI63-159 Northern Natural Gas Co.	McKinney	Kans.	Clark*	1 15 63	Iss.
CI63-401 Michigan Wisconsin Pipe Line Co.	Northeast Seiling	Okla.	Major	3 12 63	Iss.
Associated Oil & Gas Co.:					
CI62-927 Tennessee Gas Transmission Co.	New Taiton	Tex.	Wharton	4 3 63	Iss.
Associated Oil & Gas Co., et al.:					
CI62-1321 Trunkline Gas Co.*	Morales	Tex.	Jackson*	5 29 63	Iss.
Associated Oil & Gas Co., Operator, et al.:					
G-20058 Ben Bolt Gathering Co.	Tom Graham	Tex.	Jim Wells	6 28 63	Iss.
CI63-173 Kansas-Nebraska Natural Gas Co., Inc.	Bijou	Colo.	Morgan	5 29 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[#] DOCKET NO. AND PURCHASER [#]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Dora C. Atkinson:					
G–6021 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	4 3 63	Iss.
The Atlantic Refining Co.:					
G–10550 Warren Petroleum Corp.	Skaggs Pool	N. Mex.	Lea	2 21 63	Rej.
G–17571 El Paso Natural Gas Co.	Highland	Okla.	Beaver	6 19 63	Iss.
G–20020 Tennessee Gas Transmission Co.	Grand Isle Area	La.	Offshore	6 28 63	Iss.
CI63–638 Arkansas Louisiana Gas Co.	Chenlere Brake	La.	Ouachita	3 12 63	Iss.
The Atlantic Refining Co., Operator, et al.:					
G–19138 Tennessee Gas Transmission Co.	South Pass Block 30.	La.	Plaquemines	5 29 63	Iss.
Atlas Corp.:					
CI62–501 El Paso Natural Gas Co.	Blanco Pictured Cliffs Pool.	N. Mex.	Rio Arriba	5 28 63	Iss.
CI63–435 El Paso Natural Gas Co.	San Juan Basin	N. Mex.	San Juan	2 27 63	Iss.
CI63–436 El Paso Natural Gas Co.	San Juan Basin	N. Mex.	San Juan	2 27 63	Iss.
CI63–482 El Paso Natural Gas Co.	Aneth	N. Mex.	San Juan	2 27 63	Iss.
Austral Oil Co., Inc.:					
CI63–574 Valley Gas Transmission, Inc.	West Dinero	Tex.	Live Oak	5 17 63	Iss.
Avery & Hulver Operator, et al.:					
CI63–687 Texas Eastern Transmission Corp.	East Holly	Tex.	De Witt	6 6 63	Iss.
Aztec Oil & Gas Co.:					
G–13946 El Paso Natural Gas Co.	Aneth	Utah	San Juan	3 12 63	Iss.
BBM Drilling Co.:					
G–18785 El Paso Natural Gas Co.	Spraberry Trend	Tex.	Midland	2 27 63	Iss.
B. C. & J. Oil & Gas Enterprises, Inc.:					
CI62–1056 Hope Natural Gas Co.	Freemans Creek	W. Va.	Lewis	4 3 63	Iss.
B & B Gas and Oil Co., Inc.:					
CI63–747 Equitable Gas Co.	Lincoln District	W. Va.	Marion	6 6 63	Iss.
B. & L. Drilling Co.:					
CI63–510 Hope Natural Gas Co.	McClellan	W. Va.	Doddridge	3 12 63	Iss.
BTA Oil Producers:					
CI63–385 El Paso Natural Gas Co.	Spraberry Trend	Tex.	Reagan	2 27 63	Iss.
BTA Oil Producers, Operator:					
CI63–741 El Paso Natural Gas Co.	Spraberry	Tex.	Reagan	6 6 63	Iss.
BTA Oil Producers, Operator, et al.:					
CI62–1306 El Paso Natural Gas Co.	Spraberry Trend	Tex.	Reagan	5 17 63	Iss.
CI63–358 El Paso Natural Gas Co.	Spraberry Trend	Tex.	Reagan	2 27 63	Iss.
CI63–384 El Paso Natural Gas Co.	Spraberry Trend	Tex.	Reagan	2 27 63	Iss.
CI63–437 El Paso Natural Gas Co.	Spraberry Trend	Tex.	Reagan	5 17 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
B. W. P., Inc.:					
CI62-1183 El Paso Natural Gas Co.	Eumont	N. Mex.	Lea	5 29 63	Iss.
Bachus Oil Co.:					
CI62-43 Cities Service Gas Co.	Hardtner	Kans.	Barber	4 3 63	Iss.
John C. Baker.:					
CI62-1443 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	6 6 63	Iss.
E. A. Ballengee:					
CI63-746 Penova Interests	Murphy District	W. Va.	Ritchie	6 6 63	Iss.
E. A. Ballengee, et al.:					
CI63-522 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	3 12 63	Iss.
Balltown Oil & Gas Co.:					
CI62-1043 Hope Natural Gas Co.	Sardis District	W. Va.	Harrison	4 3 63	Iss.
Joe Bander, et al.:					
CI62-163 Natural Gas Pipeline Co. of America	Undesignated	Tex.	Wise	1 15 63	Iss.
Peter J. Barber, et al.:					
CI63-174 Hope Natural Gas Co.	Smithfield District	W. Va.	Roane	1 15 63	Iss.
Barnwell, Inc.:					
CI63-749 Arkansas Louisiana Gas Co.	Cheniere Brake	La.	Ouachita	6 6 63	Iss.
Barnwell, Inc., Operator, et al.:					
CI61-1496 United Gas Pipe Line Co.	Cadoville	La.	Ouachita	5 20 63	Iss.
Perry R. Bass:					
G-17309 Hope Natural Gas Co.	Abbeville*	La.	Vermilion	3 13 63	Iss.
Bateman & Whitsitt, Inc.:					
CI63-273 El Paso Natural Gas Co.	Undesignated	N. Mex.	Lea	5 29 63	Iss.
Bear Run Oil & Gas Co.:					
CI62-1087 Equitable Gas Co.	Salt Lick District	W. Va.	Braxton	5 29 63	Iss.
CI63-1091 Hope Natural Gas Co.	Hackers Creek District.	W. Va.	Lewis	6 18 63	Iss.
Bel Oil Corp.:					
CI61-1799 Tennessee Gas Transmission Co.	Crowley	La.	Acadia	5 17 63	Iss.
Bel Oil Corp., et al.:					
CI60-223 United Gas Pipe Line Co.	West Pilgrim Church.	La.	Allen	5 17 63	Iss.
Bel Oil Corp., Operator, et al.:					
G-20034 United Gas Pipe Line Co.	Foley	La.	Allen	5 17 63	Iss.
Ira W. Belcher:					
CI62-1051 United Fuel Gas Co.	Malden District	W. Va.	Kanawha	4 3 63	Iss.
Belgam Oil Co., Inc.:					
G-5287 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	4 3 63	Iss.
C. G. Benham:					
CI63-247 Trunkline Gas Co.	Frio	Tex.	Jim Wells	5 29 63	Iss.
Davisson A. Benson, Jr.:					
CI62-1084 Equitable Gas Co.	Otter District	W. Va.	Clay	4 3 63	Iss.
CI62-1516 Hope Natural Gas Co.	Union District	W. Va.	Clay	6 6 63	Iss.
Bervane Oils, Inc.:					
CI63-602 Hope Natural Gas Co.	Smithfield District	W. Va.	Roane	3 12 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
David C. Bintliff:					
CI60-248 Natural Gas Pipeline Co. of America	Baileys Prairie Area.	Tex	Brazoria	5 29 63	Iss.
Biogco, Inc.:					
CI63-553 Hope Natural Gas Co.	Glenville District	W. Va	Gilmer	2 27 63	Iss.
CI63-966 Hope Natural Gas Co.	Glenville District	W. Va	Gilmer	6 26 63	Iss.
CI63-967 Hope Natural Gas Co.	Glenville District	W. Va	Gilmer	6 26 63	Iss.
Biogco, Inc., et al.:					
CI63-325 Ohio Fuel Gas Co.	Lowell	W. Va	Washington	2 27 63	Iss.
Ray Blackwell, et al.:					
CI63-322 Hope Natural Gas Co.	Troy District	W. Va	Gilmer	2 27 63	Iss.
CI63-571 Equitable Gas Co.	DeKalb District	W. Va	Gilmer	2 27 63	Iss.
CI63-995 Hope Natural Gas Co.	Clay District	W. Va	Ritchie	6 26 63	Iss.
Thomas J. Blaho, Jr.:	Freemans Creek				
CI62-1319 Hope Natural Gas Co.		W. Va	Lewis	6 28 63	Iss.
CI63-26 Equitable Gas Co.	Troy District	W. Va	Gilmer		
CI63-186 Hope Natural Gas Co.	Union District	W. Va	Ritchie	6 6 63 1 21 63	Iss. Iss.
CI63-739 Equitable Gas Co.	Troy District	W. Va	Gilmer		
H. H. Blair:				6 6 63	Iss.
CI62-1286 Colorado Interstate Gas Co.	Greenwood	Kans	Morton	6 6 63	Iss.
Blanco Oil Co., Operator, et al.:					
CI63-439 Michigan-Wisconsin Pipe Line Co.	Laverne	Okla	Beaver	5 17 63	Iss.
George L. Blohm, Operator, et al.:					
CI62-1487 Texas Eastern Transmission Corp.	West Provident City.	Tex	Lavaca	1 21 63	Iss.
Bonray Oil Co., Operator, et al.:					
CI62-993 Cities Service Gas Co.	West Zion	Okla	Grant	6 6 63	Iss.
J. R. Bower, Jr.:					
CI63-579 El Paso Natural Gas Co.	Basin Dakota Gas Pool.	N. Mex	San Juan	3 12 63	Iss.
Bowers Drilling Co., Inc., Operator, et al.:					
CI63-398 Cities Service Gas Co.	Undesignated	Kans	Barber	2 27 63	Iss.
David W. Boyer:					
CI63-965 El Paso Natural Gas Co.	San Juan Basin	Colo	La Plata	6 26 63	Iss.
R. J. Braden:					
CI62-1231 Hope Natural Gas Co.	Murphy District	W. Va	Ritchie	6 28 63	Iss.
R. J. Braden, et al.:					
CI63-938 Hope Natural Gas Co.	Troy District	W. Va	Gilmer	6 26 63	Iss.
The Bradley Producing Corp.:					
CI63-413 Northern Natural Gas Co.	Como	Okla	Beaver	6 6 63	Iss.
S. F. Bradley:					
CI62-943 Kentucky West Virginia Gas Co.	Undesignated	Ky	Floyd	3 12 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[#] DOCKET NO. AND PURCHASER [#]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Austin G. Brady, et al.:					
CI60-807 Cities Service Gas Co.	Hugoton	Kans.	Morton	6 19 63	Iss.
R. P. Brandenburg, Operator:					
G-14869 Cities Service Gas Co.	Undesignated	Okla.	McClain	3 12 63	Iss.
Bray & Roden Gas Co.:					
CI63-970 Hope Natural Gas Co.	Jefferson District	W. Va.	Pleasants	6 26 63	Iss.
Billy Bridwell, Operator, et al.:					
CI60-507 South Texas Natural Gas Gathering Co.	Lando	Tex.	Hidalgo	6 19 63	Iss.
Donald Brightwell:					
CI63-998 Arkansas Louisiana Gas Co.	Waskom	Tex.	Harrison	6 26 63	Iss.
R. A. Bristol:					
G-5212 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	4 3 63	Iss.
The British-American Oil Co., Operator, et al.:					
CI62-984 Lone Star Gas Co.	Doyle	Okla.	Stephens	1 15 63	Iss.
The British-American Oil Producing Co.:					
CI63-253 Arkansas Louisiana Gas Co.	Cheniere Brake	La.	Ouachita	3 12 63	Iss.
CI63-918 Cities Service Gas Co.	Panhandle	Tex.	Gray	6 26 63	Iss.
Paul L. Britton, Jr., et al.:					
CI63-302 Lake Shore Pipe Line Co.	Undesignated	Pa.	Erie	3 12 63	Iss.
Earl C. Brookover:					
CI62-626 Kansas-Colorado Utilities, Inc.	Hugoton*	Kans.	Grant	6 28 63	Iss.
Brookside Oil & Gas Co.:					
CI62-1119 Hope Natural Gas Co.	Collins Settlement District.	W. Va.	Lewis	4 3 63	Iss.
CI63-110 Hope Natural Gas Co.	Collins Settlement District.	W. Va.	Lewis	6 6 63	Iss.
CI63-732 Equitable Gas Co.	Court House District.	W. Va.	Lewis	6 6 63	Iss.
Floyd H. Brown:					
G-6712 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	4 3 63	Dis.
G-6713 Louisiana-Nevada Transit Co.	Cotton Valley	La.	Webster	4 3 63	Dis.
James G. Brown & Associates, Operator, et al.:					
CI60-564 Panhandle Eastern Pipe Line Co.	North Hansford Tonkawa.	Tex.	Hansford	6 19 63	Iss.
CI61-984 United Gas Pipe Line Co.	W. Larosa	Tex.	Refugio	5 29 63	Iss.
Richard H. Brumbaugh:					
CI63-1076 Hope Natural Gas Co.	Washington District.	W. Va.	Calhoun	6 18 63	Iss.
Jack L. Burrell, Operator, et al.:					
CI63-91 El Paso Natural Gas Co.	Payton Devonian	Tex.	Ward	6 6 63	Iss.
Maxwell Busch, Agent:					
CI62-1114 Hope Natural Gas Co.	Sheridan District	W. Va.	Calhoun	4 3 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[#] DOCKET NO. AND PURCHASER [#]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
W. H. Busch:					
CI63-351 Equitable Gas Co.	DeKalb District	W. Va.	Gilmer	2 27 63	Iss.
Harry D. Bush, et al.:					
CI63-255 Hope Natural Gas Co.	DeKalb District	W. Va.	Gilmer	6 6 63	Iss.
CI63-256 Hope Natural Gas Co.	DeKalb District	W. Va.	Gilmer	6 6 63	Iss.
C. & G. Joint Venture:					
CI63-203 Equitable Gas Co.	Troy District	W. Va.	Gilmer	1 21 63	Iss.
CI63-310 Equitable Gas Co.	Freemans Creek	W. Va.	Lewis	2 27 63	Iss.
CI63-367 Hope Natural Gas Co.	Troy District	W. Va.	Gilmer	2 27 63	Iss.
Cabot Corp.:					
CI60-438 El Paso Natural Gas Co.	Undesignated	N. Mex.	Rio Arriba	6 26 63	Iss.
CI61-148 Natural Gas Pipeline Co. of America.	West Panhandle	Tex.	Carson	6 28 63	Iss.
CI62-1548 Panhandle Eastern Pipe Line Co.	Undesignated	Kans.	Seward	1 21 63	Iss.
CI63-254 Colorado Interstate Gas Co.	Mocane	Okla.	Beaver	2 27 63	Iss.
CI63-480 Natural Gas Pipeline Co. of America.	Camrick Southeast Gas Pool.	Okla.	Beaver	3 12 63	Iss.
CI63-481 Natural Gas Pipeline Co. of America.	Camrick Southeast Gas Pool.	Okla.	Beaver	3 12 63	Iss.
CI63-500 Natural Gas Pipeline Co. of America.	Camrick Southeast	Okla.	Beaver	3 12 63	Iss.
Cactus Drlg. Co.:					
CI63-512 El Paso Natural Gas Co.	Tubbs-Justis Pool	N. Mex.	Lea	3 12 63	Iss.
Caddo Pine Island Corp.:					
G-11392 Arkansas Louisiana Gas Co.	Pine Island	La.	Caddo	5 20 63	Iss.
Francis E. Cain:					
CI62-1065 Hope Natural Gas Co.	Lee District	W. Va.	Calhoun	4 3 63	Iss.
Francis E. Cain, et al.:					
CI62-1066 Hope Natural Gas Co.	Lee District	W. Va.	Calhoun	4 3 63	Iss.
Francis E. Cain, Operator, et al.:					
G-18839 Hope Natural Gas Co.	Sherman District	W. Va.	Calhoun	5 20 63	Iss.
N. B. & C. E. Calder, Jr.:					
CI63-257 Panhandle Eastern Pipe Line Co.	Hansford	Tex.	Hansford	2 27 63	Iss.
CI63-722 Panhandle Eastern Pipe Line Co.	Hansford	Tex.	Hansford	6 6 63	Iss.
The California Co., a Division of the California Oil Co.:					
CI63-169 Texas Eastern Transmission Corp.	W. Bryceland	La.	Bienville	2 27 63	Iss.
California Oil Co., Western Division:					
G-18030 El Paso Natural Gas Co.	Ratherford	Utah	San Juan	6 26 63	Iss.
Francis A. Callery:					
G-17416 United Gas Pipe Line Co.	East Gibson	La.	Terrebonne	5 17 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Callery Properties, Inc.:					
CI60-726 Transcontinental Gas Pipe Line Corp.	Rousseau	La.	LaFourche	5 17 63	Iss.
CI61-921 Tennessee Gas Transmission Co.	Trull	Tex.	Matagorda	5 17 63	Iss.
CI61-1444 United Gas Pipe Line Co.	East Gibson	La.	Terrebonne	5 17 63	Iss.
CI62-1400 Tennessee Gas Transmission Co.	Bastian Bay	La.	Plaquemines	5 17 63	Iss.
Calorm Oil & Gas Co.:					
CI63-175 Hope Natural Gas Co.	Washington District	W. Va.	Calhoun	1 15 63	Iss.
Cal-West Development Co.:					
CI63-130 Equitable Gas Co.	Undesignated	W. Va.	Braxton	1 15 63	Iss.
Calvert Exploration Co., Operator, et al.:					
CI63-177 Kansas-Nebraska Natural Gas Co., Inc.	Hugoton Formation.	Okla.	Texas	1 15 63	Iss.
Cardinal Drilling Co., Inc.:					
CI63-1028 Texas Eastern Transmission Corp.	Monroe	La.	Ouachita	6 18 63	Iss.
A. M. Carlson:					
CI62-1230 Hope Natural Gas Co.	Troy District	W. Va.	Gilmer	6 28 63	Iss.
CI63-1014 Hope Natural Gas Co.	Courthouse District.	W. Va.	Lewis	6 26 63	Iss.
A. T. Carr, et al.:					
CI62-1271 Hope Natural Gas Co.	Troy District	W. Va.	Gilmer	6 28 63	Iss.
Carrl Oil:					
CI63-555 Texas Eastern Transmission Corp.	Dallas Husky	Tex.	Goliad	2 27 63	Iss.
Carrl Oil, Operator, et al.:					
CI63-929 Texas Eastern Transmission Corp.	South Bird Island	Tex.	Kleberg	6 26 63	Iss.
Carter Development Co., Inc.:					
CI63-958 Hope Natural Gas Co.	Meade District	W. Va.	Tyler	6 26 63	Iss.
Gene A. Carter, et al.:					
CI63-704 Valley Gas Transmission, Inc.	Woodsboro	Tex.	Refugio	6 26 63	Iss.
Carter-Gragg Oil Co., Operator, et al.:					
CI62-1316 Arkansas Louisiana Gas Co.	Arkoma*	Okla.	Pittsburg*	6 21 63	Wtd.
Caulkins Oil Co., et al.:					
CI62-1323 Garfield Gas Gathering Co.	East Lamont	Okla.	Grant	5 6 63	Wtd.
Champlin Oil & Refining Co.:					
G-9627 Cities Service Gas Co.	Hugoton	Kans.	Morton	6 26 63	Iss.
CI63-1151 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Woods	3 27 63	Rej.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Champlin Oil & Refining Co., Operator, et al.:					
CI61-920 Michigan-Wisconsin Pipe Line Co.	Laverne*	Okla.	Harper	6 18 63	Iss.
CI63-204 Arkansas Louisiana Gas Co.	Undesignated	Okla.	Stephens	1 21 63	Iss.
Cities Service Co.:					
G-16563 United Gas Pipe Line Co.	Corpus Christi Northwest.	Tex.	Nueces*	3 15 63	Iss.
Cities Service Oil Co.:					
CI61-122 La-Vaca Gathering Co.	Southeast Yorktown.	Tex.	De Witt	3 25 63	Wtd.
CI62-1240 Northern Natural Gas Co.	Undesignated	Kans.	Clark	6 26 63	Iss.
Cities Service Petroleum Co.:					
CI63-76 Colorado Interstate Gas Co.	West Kansas	Kans.	Haskell	2 27 63	Iss.
CI63-167 Panhandle Eastern Pipe Line Co.	Chase Group	Kans.	Seward	1 15 63	Iss.
CI63-316 Northern Natural Gas Co.	Undesignated	Okla.	Beaver	6 6 63	Iss.
CI63-365 Cities Service Gas Co.	RR. District No. 10.	Tex.	Carson	2 27 63	Iss.
CI63-709 Natural Gas Pipeline Co. of America.	Camrick Southeast.	Okla.	Beaver	6 6 63	Iss.
CI63-701 Natural Gas Pipeline Co. of America.	Camrick Southeast.	Okla.	Beaver	6 6 63	Iss.
Cities Service Production Co.:					
G-19707 Tennessee Gas Transmission Co.	Grand Isle Area	La.	Offshore	6 28 63	Iss.
N.G. Clark:					
CI63-737 Equitable Gas Co.	Court House District.	W. Va.	Lewis	6 6 63	Iss.
Earl E. Clayton, et al.:					
G-19713 Phillips Petroleum Co.	West Panhandle	Tex.	Gray	5 20 63	Iss.
Coastal States Gas Producing Co.:					
G-17477 Natural Gas Pipeline Co. of America.	Reynolds Ranch	Tex.	Jim Wells	6 19 63	Iss.
G-17478 Natural Gas Pipeline Co. of America.	East Mathis	Tex.	San Patricio	6 19 63	Iss.
L. B. Coffman:					
CI63-452 Equitable Gas Co.	West Union District.	W. Va.	Doddridge	2 27 63	Iss.
Cohen & Kosovitz, et al.:					
G-12582 Gulf Natural Gas Corp.	Pine Island	La.	Caddo	5 20 63	Dis.
Henry Cohen, et al.:					
CI62-1127 Hope Natural Gas Co.	Union District	W. Va.	Ritchie	4 3 63	Iss.
A. E. Collingsworth:					
G-5953 Louisiana Nevada Transit Co.	Cotton Valley	La.	Webster	4 3 63	Dis.
Coloma Oil & Gas Corp., Agent:					
CI61-608 United Gas Pipe Line Co.	Bailey	Tex.	Nueces	6 26 63	Iss.
James R. Colpitt, et al.:					
CI60-701 Cities Service Gas Co.	North Schlegel Pool.	Okla.	Payne	5 20 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Compass Exploration, Inc.:					
CI62-579 El Paso Natural Gas Co.	Undesignated	N. Mex.	Rio Arriba	2 27 63	Iss.
J. E. Connally:					
CI62-1479 El Paso Natural Gas Co.	Spraberry	Tex.	Midland	1 21 63	Iss.
Consolidated Oil & Gas, Inc.:					
CI62-1058 El Paso Natural Gas Co.	Undesignated	N. Mex.	Rio Arriba	4 3 63	Iss.
CI63-78 El Paso Natural Gas Co.	Basin-Dakota	N. Mex.	San Juan	1 15 63	Iss.
Consolidated Oil & Gas, Inc., Operator, et al.:					
CI63-612 El Paso Natural Gas Co.	Basin-Dakota	N. Mex.	San Juan	3 12 63	Iss.
Continental Oil Co.:					
G-13080 Tennessee Gas Transmission Co.	E. Cameron*	La.	Offshore	1 2 63	Iss.
G-19838 Tennessee Gas Transmission Co.	Grand Isle Area	La.	Offshore	6 28 63	Iss.
CI62-942 Northern Natural Gas Co.	Eumont	N. Mex.	Lea	5 17 63	Iss.
CI62-1139 El Paso Natural Gas Co.	Ballard Pictured Cliffs.	N. Mex.	Rio Arriba*	5 29 63	Iss.
CI63-499 El Paso Natural Gas Co.	Belpre	Kans.	Edwards	2 27 63	Iss.
CI63-1099 Colorado Interstate Gas Co.	Wind River Basin	Wyo.	Fremont*	3 63 63	Rej.
Continental Oil Co., Operator., et al.:					
CI62-944 El Paso Natural Gas Co.	Eumont*	N. Mex.	Lea	5 20 63	Iss.
CI62-946 El Paso Natural Gas Co.	Langlie-Mattix	N. Mex.	Lea	5 20 63	Iss.
CI62-947 El Paso Natural Gas Co.	Langlie-Mattix	N. Mex.	Lea	5 20 63	Iss.
Cooperative Refinery Association, Operator:					
CI63-632 Arkansas Louisiana Gas Co.	Numa	Okla.	Grant	5 17 63	Iss.
A. L. Corey, Jr.:					
G-5729 Louisiana Nevada Transit Co.	Cotton Valley	La.	Webster	4 3 63	Dis.
G-5730 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	4 3 63	Dis.
Alan L. Corey:					
G-5731 Louisiana Nevada Transit Co.	Cotton Valley	La.	Webster	4 3 63	Dis.
G-5732 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	4 3 63	Dis.
Coeden Petroleum Corp.:					
CI60-249 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex.	Reagan	6 18 63	Iss.
Cotton Valley Operators Committee:					
CI60-210 Louisiana Nevada Transit Co.	Cotton Valley	La.	Webster	4 3 63	Iss.
Claude C. Cottrill, et al.:					
CI62-1076 Equitable Gas Co.	Freemans Creek District.	W. Va.	Lewis	4 3 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Edwin L. Cox:					
CI61-826 Panhandle Eastern Pipe Line Co.	Undesignated	Okla	Texas	4 3 63	Iss.
CI63-993 Cimarron Transmission Co.	Undesignated	Okla	Love	3 14 63	Rej.
John L. Cox:					
CI63-610 El Paso Natural Gas Co.	Spraberry Trend	Tex	Reagan	5 17 63	Iss.
J. Phil Cramer, et al:					
CI61-1243 Equitable Gas Co.	Undesignated	W. Va	Gilmer	5 17 63	Iss.
John B. Crawford:					
CI62-1272 Hope Natural Gas Co.	West Union District.	W. Va	Doddridge	6 28 63	Iss.
Crescent Drilling Co., Inc.:					
CI63-568 Arkansas Louisiana Gas Co.	Chenlere Brake	La	Ouachita	3 12 63	Iss.
Crest Exploration Co.:					
CI63-101 El Paso Natural Gas Co.	Ellis Ranch	Tex	Ochiltree	6 11 63	Wtd.
Crest Petroleum, Inc., Agent, Operator:					
CI63-487 Wunderlich Development Co.	Undesignated	Kans	Cowley	3 12 63	Iss.
Harry R. Cronin, Jr., et al.:					
CI63-921 Equitable Gas Co.	Grant District	W. Va	Wetzel	6 18 63	Iss.
Curran Oil Co.:					
CI63-1034 Northern Natural Gas Co.	Farnsworth	Tex	Ochiltree	6 20 63	Iss.
Dalton & Hanna:					
CI63-137 Hope Natural Gas Co.	Elk District	W. Va	Barbour	6 6 63	Iss.
CI63-352 Cumberland and Alleghany Gas Co.	Buchannon* District.	W. Va	Upshur	2 27 63	Iss.
Davidor and Davidor:					
G-14285 Cities Service Gas Co.	SW. Mount Vernon.*	Okla	Lincoln	6 28 63	Iss.
Davidor & Davidor, Inc.:					
CI63-955 Cities Service Gas Co.	Northeast Vining	Okla	Grant	6 26 63	Iss.
H. H. Davis:					
G-19672 El Paso Natural Gas Co.	Highland	Okla	Beaver	6 19 63	Iss.
Davon Drilling Co., Operator:					
G-13798 Cities Service Gas Co.	Florence	Okla	Grant*	6 28 63	Iss.
F. A. Deem:					
CI63-307 Hope Natural Gas Co.	Union District	W. Va	Gilmer	2 27 63	Iss.
J. F. Deem:					
CI63-952 Hope Natural Gas Co.	Murphy District	W. Va	Ritchie	6 26 63	Iss.
Deep Ford Gas Co., et al.:					
CI63-1010 Hope Natural Gas Co.	Triadelphia*	W. Va	Mingo	6 26 63	Iss.
Delhi-Taylor Oil Corp.:					
CI62-1096 El Paso Natural Gas Co.	Pictured Cliffs Formation.	N. Mex	San Juan	4 3 63	Iss.
CI62-1101 El Paso Natural Gas Co.	Undesignated	N. Mex	San Juan	4 3 63	Iss.
CI63-651 El Paso Natural Gas Co.	Undesignated	Colo	La Plata	6 6 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Delta Drilling Co.:					
G–12978 Lone Star Gas Co.	Winnsboro	Tex.	Wood	4 24 63	Dis.
G–12979 Arkansas Louisiana Gas Co.	Jefferson	Tex.	Marion	5 17 63	Iss.
CI63–802 Equitable Gas Co.	Glenville	W. Va.	Gilmer	5 17 63	Iss.
Delta Drilling Co., Operator, et al.:					
CI63–22 Lone Star Gas Co.	Danville Area	Tex.	Rush	6 6 63	Iss.
CI63–784 Lone Star Gas Co.	Danville East Texas Area.	Tex.	Gregg	5 17 63	Iss.
Denver Chenoweth Gas Co.:					
CI61–1554 Hope Natural Gas Co.	Washington District.	W. Va.	Calhoun	4 3 63	Iss.
Devonian Gas & Oil Co.:					
CI63–115 Hope Natural Gas Co.	New Milton District.	W. Va.	Doddridge	6 6 63	Iss.
Roscoe Dingess, Jr., et al.:					
CI62–1132 Hope Natural Gas Co.	Triadelphia District.	W. Va.	Logan	4 3 63	Iss.
N. R. Dispenza, et al.:					
CI63–199 Kansas-Nebraska Natural Gas Co., Inc.	Undesignated	Colo.	Logan	1 15 63	Iss.
CI63–223 Kansas-Nebraska Natural Gas Co., Inc.	Undesignated	Colo.	Logan	1 15 63	Iss.
Dorchester Gas Producing Co.:					
CI63–406 Northern Natural Gas Co.	White Deer	Tex.	Carson	5 16 63	Wtd.
D. A. Dorward:					
CI63–983 Hope Natural Gas Co.	Glenville District	W. Va.	Doddridge	6 26 63	Iss.
D. A. Dorward, et al.:					
CI63–917 Hope Natural Gas Co.	Glenville District	W. Va.	Gilmer	6 26 63	Iss.
Dreamer Oil Co.:					
CI63–541 Hope Natural Gas Co.	Central District	W. Va.	Doddridge	2 27 63	Iss.
Drilling & Exploration Co., Inc.:					
CI62–810 Lone Star Gas Co.	Knox	Okla.	Grady[6]	5 20 63	Iss.
Drilling & Exploration Co., Inc. Operator, et al.:					
CI63–121 Panhandle Eastern Pipe Line Co,	Spooney	Tex.	Hansford	6 6 63	Iss.
Dunn-Mar Oil & Gas Co.					
CI62–1361 South Penn Oil Co.	Troy District	W. Va.	Gilmer	6 6 63	Iss.
Glenn M. Dunne, et al.:					
CI60–779 Panhandle Eastern Pipe Line Co.	Hugoton	Kans.	Stevens	6 19 63	Iss.
L. R. Dunwoody, Operator:					
CI62–971 Altex Corp.	Ben Bolt	Tex.	Jim Wells	4 3 63	Iss.
Eason Oil Co.:					
CI63–228 Cities Service Gas Co.	Undesignated	Okla.	Noble	1 21 63	Iss.
Eason Oil Co., Operator, et al.:					
G–19703 Texas Eastern Transmission Corp.	Iota	La.	Acadia	6 14 63	Dis.
Howard P. Eells, et al.:					
CI63–930 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	6 26 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[3] DOCKET NO. AND PURCHASER [3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
John J. Eisner:					
CI61-1129 Panhandle Eastern Pipe Line Co.	Mocane	Okla.	Beaver	6 28 63	Iss.
Hayward Ellison Gas Co.:					
G-15896 Equitable Gas Co.	DeKalb District	W. Va.	Gilmer	1 8 63	Dis.
John B. Emery II, Agent:					
CI62-1196 Equitable Gas Co.	Undesignated	W. Va.	Clay*	3 12 63	Iss.
Robert N. Enfield, Operator:					
CI62-1169 El Paso Natural Gas Co.	Dollarhide Queen	N. Mex.	Lea	4 3 63	Iss.
Eugard Corp.					
CI61-703 Cities Service Gas Co.	Gardner	Kans.	Johnson City	6 18 63	Iss.
Exchange Oil Co., Ltd., Operator, et al.					
CI61-1358 Cities Service Gas Co.	North Hoover-Hoxbar.	Okla.	Garvin	3 21 63	Iss.
F.T.F. Corp.:					
G-18126 Natural Gas Pipeline Co. of America.	Twin*	Tex.	Hansford	6 18 63	Iss.
Fairfax Oil & Gas Co.:					
CI63-109 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	6 6 63	Iss.
Fairman Drilling Co.:					
CI62-1060 New York State Natural Gas Corp.	Boone Mountain	Pa.	Clearfield	4 3 63	Iss.
CI62-1061 New York State Natural Gas Corp.	Boone Mountain	Pa.	Clearfield	4 3 63	Iss.
CI62-1062 New York State Natural Gas Corp.	Boone Mountain	Pa.	Clearfield	4 3 63	Iss.
CI62-1063 New York State Natural Gas Corp.	Boone Mountain	Pa.	Clearfield	4 3 63	Iss.
CI62-1485 New York State Natural Gas Corp.	Sandy Township	Pa.	Clearfield	5 29 63	Iss.
Falcon Seaboard Drilling Co., Operator, et al.:					
CI63-502 Northern Natural Gas Co.	South Logan	Okla.	Beaver	2 27 63	Iss.
Bill Ferguson:					
CI63-387 Panhandle Eastern Pipe Line Co.	Undesignated	Kans.	Meade	3 12 63	Iss.
F. W. Fest:					
CI63-214 Equitable Gas Co.	Glenville District	W. Va.	Gilmer	1 21 63	Iss.
First Transportation Gas Corp., Inc.:					
CI63-978 Cities Service Gas Co.	Undesignated	Okla.	Woodward	6 26 63	Iss.
Paul J. Fly:					
G-9590 United Gas Pipe Line Co.	North Koontz	Tex.	Victoria	4 12 63	Wtd.
W. I. Forbes, et al.:					
CI63-1115 Hope Natural Gas Co.	DeKalb District	W. Va.	Gilmer	4 3 63	Iss.
Edmond J. Ford, Jr. & Harry W. Hamilton:					
CI62-1429 Valley Gas Transmission, Inc.	Ramirena	Tex.	Live Oak	2 15 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[#] DOCKET NO. AND PURCHASER [#]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
W. A. Ford, Agent:					
CI62-1103 Hope Natural Gas Co.	West Union District.	W. Va.	Doddridge	4 3 63	Iss.
R. L. Foree:					
CI61-315 F.T.F. Gas Corp.	Twin	Tex.	Hansford	6 18 63	Iss.
Forest Oil Corp.:					
CI63-1103 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Woods	3 29 63	Rej.
Forest Oil Corp., et al.:					
CI63-744 Wunderlich Development Co.	Undesignated	Okla.	Kay	6 26 63	Iss.
Forest Oil Corp., Operator, et al.:					
CI63-743 Wunderlich Development Co.	Undesignated	Okla.	Kay	6 26 63	Iss.
Four States Drilling Co., Inc.:					
CI62-1075 United Gas Pipe Line Co.	Pistol Ridge	Miss.	Pearl River	2 27 63	Iss.
Elias Floyd Fox:					
CI63-1094 Cabot Corp.	Southfork	W. Va.	Calhoun	6 18 63	Iss.
John Franks, Operator, et al.:					
CI62-1226 Texas Eastern Transmission Corp.	North Liberty Hill	La.	Bienville	1 15 63	Iss.
CI63-404 United Gas Pipe Line Co.	Undesignated	La.	Webster	2 27 63	Iss.
CI63-569 Texas Gas Transmission Corp.	Terryville	La.	Lincoln	2 27 63	Iss.
French Creek Gas Co.:					
CI63-158 Hope Natural Gas Co.	Meade District	W. Va.	Upshur	6 6 63	Iss.
Francis Friestad, et al.:					
CI63-771 Columbian Fuel Corp.	Undesignated	Ky.	Floyd	5 17 63	Iss.
E. L. Fundingsland:					
CI63-303 El Paso Natural Gas Co.	Undesignated	N. Mex.	Rio Arriba	6 6 63	Iss.
Roy Furr:					
CI63-191 Northern Natural Gas Co.	Undesignated	Tex.	Hanford	1 21 63	Iss.
Roy Furr, Operator:					
CI63-509 Panhandle Eastern Pipe Line Co.	Hansford	Tex.	Hansford	3 12 63	Iss.
D. L. Gainer:					
CI63-529 Hope Natural Gas Co.	Sheridan District	W. Va.	Calhoun	2 27 63	Iss.
CI63-907 Hope Natural Gas Co.	Sheridan District	W. Va.	Calhoun	6 26 63	Iss.
Dave Gammill, Operator, et al.:					
CI63-932 United Gas Pipe Line Co.	Baxterville	Miss.	Lamar	6 26 63	Iss.
Gas & Oil Operations:					
CI61-702 Eugard Corp.	Gardner	Kans.	Johnson	6 18 63	Iss.
Gas Futures, Ltd.:					
CI63-363 Northern Natural Gas Co.	Como Area	Okla.	Beaver	2 27 63	Iss.
Gas Leasing Corp., Inc., Operator:					
CI62-848 El Paso Natural Gas Co.	Cha Cha Gallup	N. Mex.	San Juan	6 26 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Gas Transmission, Inc.:					
CI61-147 Cities Service Gas Co.	N. School Creek	Kans.	Cowley	6 28 63	Iss.
E. R. Gawthrop & J. Ralph Garner:					
CI61-1787 Hope Natural Gas Co.	Ten Mile	W. Va.	Harrison	5 20 63	Iss.
R. James Gear:					
CI63-396 Cities Service Gas Co.	Undesignated	Kans.	Harper	2 27 63	Iss.
General American Oil Co. of Texas:					
G-3895 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	4 3 63	Iss.
CI60-149 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	4 3 63	Iss.
General Exploration Co., Inc.:					
CI63-664 El Paso Natural Gas Co.	Vinegarrone	Tex.	Val Verde	5 17 63	Iss.
Geode Petroleum, Inc.:					
CI60-318 Tennessee Gas Transmission Co.	Corpus Channel	Tex.	Nueces	5 20 63	Iss.
The Gerhig Co. of Arkansas, Operator, et al.:					
CI63-348 Rio Sabine, Inc.	Simpson Lake	La.	Caddo	2 27 63	Iss.
Gilcrease Oil Co.:					
CI63-400 Panhandle Eastern Pipe Line Co.	S. Kismet	Kans.	Seward	2 27 63	Iss.
Charles B. Gillespie, Jr., Operator, et al.:					
CI63-391 El Paso Natural Gas Co.	Dollarhide Queen	N. Mex.	Lea	2 27 63	Iss.
Carolyn C. Gillmore:					
G-5722 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	4 3 63	Dis.
G-5723 Louisiana Nevada Transit Co.	Cotton Valley	La.	Webster	4 3 63	Dis.
Glenn, Inc.:					
CI63-386 Equitable Gas Co.	Central District	W. Va.	Doddridge	2 27 63	Iss.
Delbert Goff:					
CI62-1188 Equitable Gas Co.	Glenville District	W. Va.	Gilmer	6 28 63	Iss.
Delbert Goff, et al.:					
CI63-535 Hope Natural Gas Co.	Glenville District	W. Va.	Gilmer	2 27 63	Iss.
Henry O. Gossett, Jr., et al.:					
CI62-51 Equitable Gas Co.	Troy District	W. Va.	Gilmer	5 17 63	Iss.
George W. Graham, Inc.:					
CI61-1480 Emory Spencer	Fulton Beach	Tex.	Aransas	5 17 63	Iss.
Graham-Michaelis Drlg. Co.:					
CI63-488 Northern Natural Gas Co.	Doby Springs	Okla.	Harper	3 12 63	Iss.
CI63-811 Northern Natural Gas Co.	Hugoton	Kans.	Finney	6 26 62	Iss.
Graridge Corp.:					
CI60-330 C. V. Lyman	Bentonville	Tex.	Jim Wells	5 1 63	Iss.
CI60-331 Tennessee Gas Transmission Co.	Agua Dulce	Tex.	Nueces	5 1 63	Iss.
CI60-484 Texas Gas Transmission Corp.	Mallard Bay	La.	Cameron	5 1 63	Iss.
CI61-1106 Cities Service Gas Co.	Undesignated	Kans.	Barber	5 1 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Graridge Corp—Continued					
CI61-1107 Cities Service Gas Co.	Aetna	Kans.	Barber	5 1 63	Iss.
CI61-1108 Cities Service Gas Co.	South Rhodes	Kans.	Barber	5 1 63	Iss.
CI61-1109 Cities Service Gas Co.	South Rhodes	Kans.	Barber	5 1 63	Iss.
CI61-1110 Cities Service Gas Co.	South Rhodes	Kans.	Barber	5 1 63	Iss.
CI61-1586 United Gas Pipe Line Co.	Undesignated	Tex.	Goliad	5 1 63	Iss.
CI63-402 Lone Star Gas Co.	Katie	Okla.	Garvin	3 12 63	Iss.
Grass Run Oil & Gas Co.:					
CI63-600 Cabot Corp.	Murphy District	W. Va.	Ritchie	3 12 63	Iss.
R.R. Greenbaum:					
CI63-941 Wunderlich Development Co.	Undesignated	Kans.	Sumner	6 26 63	Iss.
CI63-942 Wunderlich Development Co.	Undesignated	Kans.	Sumner	6 26 63	Iss.
Gregg Oil Co., Inc., Operator, et al.:					
CI63-64 Southern Natural Gas Co.	Monroe	La.	Ouachita*	1 21 63	Iss.
Carola A. Grothe, et al.:					
CI61-339 Columbian Carbon Co.	New Milton District.	W. Va.	Doddridge	5 29 63	Iss.
J. G. Grow, Agent:					
CI62-1431 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	3 21 63	Iss.
Gulf Coast Minerals Management Corp., Operator:					
CI60-676 Transcontinental Gas Pipe Line Corp.	Burkhart	Tex.	Duval	5 29 63	Iss.
Gulf Oil Corp.:					
CI60-422 Mesquite Gas Products, Inc.	Davis	Tex.	Upton	5 29 63	Iss.
CI62-948 Lone Star Gathering Co.	Yorktown	Tex.	Dewitt	4 16 63	Wtd.
CI62-1203 Panhandle Eastern Pipe Line Co.	Forgan Pool	Okla.	Beaver	6 28 63	Iss.
CI63-1281 Panhandle Eastern Pipe Line Co.	North West Avard Pool.	Okla.	Woods	4 30 63	Rej.
Gulf Oil Corp., Operator, et al.:					
CI62-1515 Mountain Fuel Supply Co.	State Line	Wyo.	Carbon*	4 22 63	Iss.
Gulf Sands Oil Co., & Alvin Candela:					
CI63-1048 Banquete Gas Co. A Division of Crestmont.	Spartan*	Tex.	San Patricio	6 18 63	Iss.
Gulf States Development Corp., Operator., et al.:					
CI62-1256 Altex Corp.	Tom Graham	Tex.	Jim Wells	6 28 63	Iss.
Elwyn C. Hale & Mable E Hale:					
CI63-1072 El Paso Natural Gas Co.	North Justice	N. Mex.	Lea	6 18 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[#] DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Victor Hale, et al.:					
CI63-171 Columbian Fuel Corp.	Middle Creek Field.	Ky.	Floyd	1 15 63	Iss.
Hall-Jones Oil Corp.:					
CI63-128 Northern Natural Gas Co.	Como Area*	Okla.	Beaver	6 6 63	Iss.
Hall-Jones Oil Corp., Operator, et al.:					
CI63-414 Cities Service Gas Co.	Eureka	Okla.	Grant	2 27 63	Iss.
Fredrick C. & Ferris F. Hamilton:					
CI63-620 The Bering Co.	Horizon	Tex.	Ochiltree	6 18 63	Iss.
John M. Hamilton, et al.:					
CI63-1207 Trunkline Gas Co.	Almond*	Tex.	Jim Wells	4 8 63	Rej.
Jake L. Hamon:					
G-16747 United Gas Pipe Line Co.	Corpus Christi Northwest.	Tex.	Nueces	4 22 63	Iss.
CI63-132 Northern Natural Gas Co.	Panhandle Area	Okla.	Beaver	6 6 63	Iss.
CI63-133 Northern Natural Gas Co.	Panhandle Area	Okla.	Beaver	6 6 63	Iss.
Harry Hampton Enterprises:					
CI63-170 Hope Natural Gas Co.	Glenville District	W. Va.	Gilmer	1 15 63	Iss.
B. A. Hardey:					
G-19439 Panhandle Eastern Pipe Line Co.	Hugoton Field	Kans.	Stevens	5 20 63	Iss.
Don W. Hardman:					
CI63-527 Hope Natural Gas Co.	New Milton District.	W. Va.	Doddridge	3 12 63	Iss.
Harper Oil Co., Operator, et al.:					
CI62-217 Colorado Interstate Gas Co.	Mocane	Okla.	Beaver	6 26 63	Iss.
CI63-279 Lone Star Gas Co.	Crews	Okla.	Stephens	1 15 63	Iss.
Dewey Harris, et al.:					
CI63-640 Equitable Gas Co.	Warren District	W. Va.	Upshur	5 17 63	Iss.
Dan J. Harrison, Jr., Operator, et al.:					
CI63-684 Texas Eastern Transmission Corp.	Northeast Nada	Tex.	Colorado	6 6 63	Iss.
E. C. Hartman, et al.:					
CI63-947 Hope Natural Gas Co.	Birch District	W. Va.	Braxton	6 26 63	Iss.
J. M. Hawley, et al.:					
G-19709 Phillips Petroleum Co.	West Panhandle	Tex.	Gray	5 20 63	Iss.
Hawn Brothers:					
G-12692 United Gas Pipe Line Co.	South Porter Oil	Tex.	Karnes*	6 19 63	Dis.
Haynes & V.T. Drilling Co.:					
CI61-1157 El Paso Natural Gas Co.	Jalmat*	N. Mex.	Lea	2 27 63	Iss.
Hays & Co., Agent:					
CI62-1112 Hope Natural Gas Co.	DeKalb District	W. Va.	Gilmer	4 3 63	Iss.
CI63-916 Hope Natural Gas Co.	Glenville District	W. Va.	Gilmer	6 26 63	Iss.
CI63-980 Hope Natural Gas Co.	Glenville District	W. Va.	Gilmer	6 26 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[#] DOCKET NO. AND PURCHASER [#]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Hays & Co., Agent—Continued					
CI63-982 Hope Natural Gas Co.	Lee District	W. Va.	Calhoun	6 26 63	Iss.
Jack Hearrell:					
CI63-536 Hope Natural Gas Co.	Hackers Creek District.	W. Va.	Lewis	2 27 63	Iss.
Helendale Properties, Inc.:					
CI63-389 Northern Natural Gas Co.	Undesignated	Okla*	Beaver*	3 12 63	Iss.
Helmerich & Payne, Inc., et al.:					
CI63-197 El Paso Natural Gas Co.	Spraberry	Tex.	Reagan	6 26 63	Iss.
Helmerich & Payne, Inc., Operator:					
CI63-354 Lone Star Gas Co.	East Brady	Okla.	Garvin	3 12 63	Iss.
Helmerich & Payne, Inc., Operator, et al.:					
CI61-481 Gas Transmission, Inc.	North School Creek.	Kans.	Cowley	6 28 63	Iss.
Hiawatha Oil & Gas Co., Operator, et al.:					
G-20016 Transcontinental Gas Pipe Line Corp.	East Longhorn*	Tex.	Duval	5 20 63	Iss.
Highland Oil Co., Operator, et al.:					
CI63-359 Texas Eastern Transmission Corp.	Pheasant	Tex.	Matagorda	2 27 63	Iss.
Va Roy Hildreth:					
CI63-534 Hope Natural Gas Co.	Spencer District	W. Va.	Roane	3 12 63	Iss.
W. H. Hildreth, et al.:					
CI63-951 Hope Natural Gas Co.	Spencer District	W. Va.	Roane	6 26 63	Iss.
J. E. Hillier:					
CI62-632 Valley Gas Transmission, Inc.	Lagarto	Tex.	Live Oak	5 17 63	Iss.
L. C. Hoffman:					
G-15816 Southern Natural Gas Co.	Logansport	La.	De Soto	6 6 63	Iss.
R. H. Holland & W. L. Russell:					
CI63-959 Northern Natural Gas Co.	Gray Area	Okla.	Beaver	6 26 63	Iss.
Hollandsworth & Travis, Operators, et al.:					
CI61-595 Mississippi River Fuel Corp.	Woodlawn	Tex.	Harrison	6 26 63	Iss.
CI63-147 Arkansas Louisiana Gas Co.	Waskom	Tex.	Harrison	1 15 63	Iss.
J. H. Huber Corp.:					
CI63-887 Michigan-Wisconsin Pipe Line Co.	Laverne	Okla.	Beaver	6 26 63	Iss.
CI63-907 Michigan-Wisconsin Pipe Line Co.	Laverne	Okla.	Beaver	6 26 63	Iss.
CI63-954 Michigan-Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	6 26 63	Iss.
CI63-1027 Cities Service Gas Co.	Northwest Lovedale.	Okla.	Harper	6 18 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Humble Oil & Refining Co.:					
G-20136 Transcontinental Gas Pipe Line Corp.	Dilworth Dome*	Tex	McMullen	5 20 63	Iss.
CI60-828 Natural Gas Pipeline Co. of America	Camrick S.E. Gas Pool	Okla	Beaver	5 20 63	Iss.
CI61-157 Natural Gas Pipeline Co. of America	Sugar Valley	Tex	Matagorda	3 27 63	Iss.
CI62-118 Northern Natural Gas Co.	Dude Wilson	Tex	Ochiltree	5 20 63	Iss.
CI62-327 El Paso Natural Gas Co.	Spraberry Trend	Tex	Reagan	5 20 63	Iss.
CI62-328 El Paso Natural Gas Co.	Spraberry Trend	Tex	Reagan	5 20 63	Iss.
CI62-329 El Paso Natural Gas Co.	Spraberry Trend	Tex	Reagan	5 20 63	Iss.
CI62-331 El Paso Natural Gas Co.	Spraberry Trend	Tex	Reagan	5 20 63	Iss.
CI62-332 El Paso Natural Gas Co.	Spraberry Trend	Tex	Reagan	5 20 63	Iss.
CI62-1236 Texas Gas Transmission Corp.	Minden	La	Webster	1 15 63	Iss.
CI63-20 Arkansas Louisiana Gas Co.	Carterville*	Okla	Haskell*	6 21 63	Iss.
CI63-30 Arkansas Louisiana Gas Co.	Cheniere Brake	La	Ouachita	1 21 63	Iss.
CI63-287 Valley Gas Transmission, Inc.	Ramierena	Tex	Live Oak	3 12 63	Iss.
CI63-330 El Paso Natural Gas Co.	Spraberry Trend	Tex	Reagan	5 20 63	Iss.
CI63-501 Arkansas Louisiana Gas Co.	East Woodlawn	Tex	Harrison	3 12 63	Iss.
CI63-516 Champlin Oil & Refining Co.	Lockridge	Okla	Logan	6 6 63	Iss.
CI63-681 Natural Gas Pipeline Co. of America.	Camrick	Okla	Beaver	6 6 63	Iss.
CI63-689 El Paso Natural Gas Co.	Spraberry Trend	Tex	Reagan	5 17 63	Iss.
CI63-1023 Colorado Interstate Gas Co.	Wind River Basin Area.	Wyo	Fremont*	2 21 63	Rej.
Humble Oil & Refining Co., et al.:					
CI63-621 Natural Gas Pipeline Co. of America.	South Angeleton	Tex	Brazoria	3 12 63	Iss.
Glen Humphrey, Jr.:					
CI63-703 Valley Gas Transmission, Inc.	Refugio	Tex	Refugio	6 26 63	Iss.
Humphrey Oil Corp., et al.:					
CI63-706 Valley Gas Transmission, Inc.	Mission River	Tex	Refugio	6 26 63	Iss.
Hassie Hunt Trust:					
CI63-606 Texas Gas Transmission Corp.	Sugar Creek	La	Claiborne	3 12 63	Iss.
Lyda Hunt-Bunker Trusts:					
CI63-48 El Paso Natural Gas Co.	Brown-Bassett	Tex	Terrell	1 21 63	Iss.
Lyda Hunt-Caroline Trusts:					
CI63-49 El Paso Natural Gas Co.	Brown-Bassett	Tex	Terrell	1 21 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION
Lyda Hunt-Herbert Trusts:					
CI63-45 El Paso Natural Gas Co.	Brown-Bassett	Tex.	Terrell	1 21 63	Iss.
Lyda Hunt-Lamar Hunt:					
CI63-46 El Paso Natural Gas Co.	Brown-Bassett	Tex.	Terrell	1 21 63	Iss.
Lyda Hunt-Margaret Trusts:					
CI63-47 El Paso Natural Gas Co.	Brown-Bassett	Tex.	Terrell	1 21 63	Iss.
W. H. Hunt:					
G-19956 South Texas Natural Gas Gathering Co.	El Benadito Area	Tex.	Starr	4 29 63	Wtd.
William Herbert Hunt Trust Estate:					
CI61-1433 Emory M. Spencer	Fulton Beach	Tex.	Aransas	5 17 63	Iss.
William C. Hurtt:					
CI61-767 Equitable Gas Co.	Troy District	W. Va.	Gilmer	5 29 63	Iss.
CI63-949 Hope Natural Gas Co.	Birch District	W. Va.	Braxton	6 26 63	Iss.
Ben C. W. Hyde, Jr., Operator, et al.:					
CI63-754 Cities Service Gas Co.	McClintock Gas Pool.	Kans.	Rice	5 17 63	Iss.
Hydrocarbon Chemicals, Inc.:					
G-20362 Hope Natural Gas Co.	Otter	W. Va.	Braxton	3 12 63	Iss.
G-20364 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	3 12 63	Iss.
G-20365 Hope Natural Gas Co.	Center District	W. Va.	Gilmer	3 12 63	Iss.
G-20366 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	3 12 63	Iss.
CI63-934 Equitable Gas Co.	Otter District	W. Va.	Braxton	6 26 63	Iss.
Henry S. Inger:					
CI63-415 Panhandle Eastern Pipe Line Co.	Wil	Kans.	Edwards	2 27 63	Iss.
Inland States Gas Co.:					
CI63-1003 Cushing Gas Transmission Co.	South Cushing	Okla.	Lincoln*	6 18 63	Iss.
Curtis R. Inman:					
CI61-702 Transwestern Pipeline Co.	Worsham	Tex.	Reeves	1 31 63	Wtd.
A. G. Isminger, Agent:					
CI61-675 Hope Natural Gas Co.	Proctor District	W. Va.	Wetzel	5 20 63	Iss.
J. & B. Oil Co., Inc.:					
CI63-233 Equitable Gas Co.	Birch District	W. Va.	Braxton	1 21 63	Iss.
CI63-806 South Penn Natural Gas Co.	Smithfield District	W. Va.	Spencer	5 17 63	Iss.
Jack Properties, Inc.:					
CI60-256 Tennessee Gas Transmission Co.	Mary	Tex.	Jim Wells	5 20 63	Iss.
George Jackson:					
CI63-594 Hope Natural Gas Co.	Grant District	W. Va.	Doddridge	3 12 63	Iss.
Lloyd G. Jackson, et al.:					
CI63-62 Hope Natural Gas Co.	Eagle District	W. Va.	Harrison	2 27 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Lloyd G. Jackson, et al—Con.					
CI63-207 Hope Natural Gas Co.	McClellan District	W. Va.	Doddridge	1 21 63	Iss.
CI63-763 Hope Natural Gas Co.	Undesignated	W. Va.	Kanawha	5 17 63	Iss.
Jenkins-Ray Supply:					
CI63-490 Wunderlich Development Co.	Undesignated	Okla.	Kay	3 12 63	Iss.
E. Lyle Johnson:					
CI63-360 Lone Star Gas Co.	Show-Vel-Tum	Okla.	Carter	2 27 63	Iss.
E. Lyle Johnson, Operator, et al.:					
CI63-235 Kansas-Nebraska Natural Gas Co., Inc.	Chappell Gas	Colo.	Sedgewick	1 15 63	Iss.
Edwin M. Jones Oil Co.:					
CI63-486 Transcontinental Gas Pipe Line Corp.	North East Harris	Tex.	Live Oak	3 12 63	Iss.
CI63-627 Valley Gas Transmission, Inc.	South Oakville	Tex.	Live Oak	5 17 63	Iss.
Dr. James C. Joyner:					
G-2918 Louisiana Nevada Transit Co.	Cotton Valley	La.	Webster	4 3 63	Dis.
The Jupiter Corp.:					
CI61-1163 Texas Eastern Transmission Corp.	West Weesatche	Tex.	Goliad	5 29 63	Iss.
Harry A. Kalish, et al.:					
CI62-1194 Hope Natural Gas Co.	Washington District.	W. Va.	Calhoun	6 28 63	Iss.
CI63-21 Hope Natural Gas Co.	Troy District	W. Va.	Gilmer	2 27 63	Iss.
CI63-138 United Fuel Gas Co.	Union District	W. Va.	Clay	6 6 63	Iss.
Katex Oil Co.:					
CI63-163 Panhandle Eastern Pipe Line Co.	Mocane-Laverne	Okla.	Beaver	1 15 63	Iss.
Jeanne E. Kerbs:					
CI62-1193 El Paso Natural Gas Co.	Spraberry	Tex.	Upton	5 29 63	Iss.
CI62-1199 El Paso Natural Gas Co.	Spraberry	Tex.	Upton	5 29 63	Iss.
Kerr-McGee Oil Industries, Inc.:					
G-17304 Phillips Petroleum Co.	Guymon-Hugoton	Okla.	Texas	3 25 63	Rej.
G-17305 Phillips Petroleum Co.	Texas-Hugoton	Tex.	Sherman	3 25 63	Rej.
CI62-989 Panhandle Eastern Pipe Line Co.	North Carthage	Okla.	Texas	6 28 63	Iss.
CI63-923 Colorado Interstate Gas Co.	Beaver Creek	Wyo.	Fremont	2 19 63	Rej.
O. B. Kiel, Jr., et al.:					
CI63-599 Trunkline Gas Co.	Dunn Field Area	Tex.	Jim Wells	3 12 63	Iss.
S. H. Killingsworth, Operator:					
G-12980 Arkansas Louisiana Gas Co.	Jefferson	Tex.	Marion	2 13 63	Rej.
Kimbark Exploration Co.:					
CI63-382 Kansas-Nebraska Natural Gas Co., Inc.	Darby Creek	Colo.	Logan	2 27 63	Iss.
Kincaid Oil & Gas Co.:					
CI63-242 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	1 21 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
King-Stevenson Gas and Oil Co.:					
CI63-240 Northern Natural Gas Co.	Hugoton	Kans.	Seward	2 27 63	Iss.
CI63-263 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	2 27 63	Iss.
CI63-292 Arkansas Louisiana Gas Co.	East Kremlin	Okla.	Garfield	2 27 63	Iss.
CI63-293 Panhandle Eastern Pipe Line Co.	Northeast Selling	Okla.	Dewey*	2 27 63	Iss.
King-Stevenson Oil Co.:					
G-17482 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	2 27 63	Dis.
C. L. Kingsbury, et al.:					
CI63-350 Hope Natural Gas Co.	Washington District.	W. Va.	Calhoun	2 27 63	Iss.
Kirby Production Co., et al.:					
CI63-912 Colorado Interstate Gas Co.	Undesignated	Kans.	Morton	6 14 63	Rej.
Kirby Royalties, Inc., Operator, & Agent, et al.:					
CI62-1336 Mountain Fuel Supply Co.	Undesignated	Wyo.	Sweetwater	6 28 63	Iss.
Kirkwood & Morgan, Inc.:					
CI62-1017 Banquete Gas Co., A Division, Crestmont Co.	Spartan*	Tex.	San Patricio	6 18 63	Iss.
Joseph G. Kluthe, Operator, et al.:					
CI63-295 El Paso Natural Gas Co.	South Andrews	Tex.	Andrews	6 6 63	Iss.
Charles F. Koontz:					
CI62-178 Equitable Gas Co.	Central District	W. Va.	Doddridge	4 3 63	Iss.
R. M. Kuhn, Agent:					
CI63-329 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	2 27 63	Iss.
CI63-526 Hope Natural Gas Co.	Court House District.	W. Va.	Lewis	3 12 63	Iss.
Walter F. Kuhn, et al.:					
CI63-630 Northern Natural Gas Co.	Undesignated	Kans.	Haskell*	3 12 63	Iss.
Lab Oil Co.:					
CI61-1036 Valley Gas Transmission, Inc.	Independence	Tex.	Duval	5 20 63	Iss.
CI61-1357 Valley Gas Transmission, Inc.	South Independence.	Tex.	Duval	5 20 63	Iss.
CI62-1398 Valley Gas Transmission, Inc.	Independence	Tex.	Duval	5 29 63	Iss.
P. G. Lake, Inc.:					
CI62-1185 Cities Service Gas Co.	Undesignated	Okla.	Woods	6 28 63	Iss.
David W. Law:					
CI62-1265 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	5 29 63	Iss.
O. B. Lawman & O. L. Allman:					
G-14586 Hope Natural Gas Co.	Clark District	W. Va.	Harrison	3 12 63	Iss.
Lee Brothers Oil Co., et al.:					
CI62-261 Valley Gas Transmission, Inc.	Lagarto	Tex.	Live Oak	5 17 63	Iss.
P. G. Legendre:					
G-6714 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	4 3 63	Iss.
G-6715 Louisiana Nevada Transit Co.	Cotton Valley	La.	Webster	4 3 63	Dis.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Philip Lemon, et al.:					
CI62-1262 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	6 28 63	Iss.
Elmo E. Lewton, Operator, et al.:					
CI63-637 Kansas-Nebraska Natural Gas Co., Inc.	Undesignated	Colo.	Washington	6 26 63	Iss.
Liberty Fuel Corp. of West Virginia:					
CI63-509 Hope Natural Gas Co.	Freemans Creek District.	W. Va.	Lewis	3 12 63	Iss.
W. B. Linkous:					
CI62-844 South Penn Oil Co.	Glenville District	W. Va.	Gilmer	5 20 63	Iss.
John L. Loeb, Operator, et al.:					
CI60-80 Texas Eastern Transmission Corp.	Mercedes	Tex.	Hidalgo	1 15 63	Rej.
Logue & Patterson, et al.:					
CI62-1295 United Gas Pipe Line Co.	South Weesatche	Tex.	Goliad	6 28 63	Iss.
Lone Star Producing Co.:					
CI61-455 Valley Gas Transmission, Inc.	South Oakville	Tex.	Live Oak	5 29 63	Iss.
CI63-604 Transcontinental Gas Pipe Line Corp.	Pearl Harris Gas Unit.	Tex.	Live Oak	3 12 63	Iss.
George Longfellow:					
CI63-376 Hope Natural Gas Co.	Washington District	W. Va.	Calhoun	2 27 63	Iss.
Bruce J. Lowe, et al.:					
CI62-418 Hope Natural Gas Co.	Clay District	W. Va.	Ritchie	5 20 63	Iss.
C. H. Lyons, Sr., et al.:					
CI62-963 Rio Sabine, Inc.	Carthage	Tex.	Panola	2 27 63	Iss.
CI62-1340 Mississippi River Fuel Corp.	Woodlawn	Tex.	Harrison	5 29 63	Iss.
McAlester Fuel Co.:					
CI62-1113 Hope Natural Gas Co.	New Milton District.	W. Va.	Doddridge	4 3 63	Iss.
CI63-231 Hope Natural Gas Co.	New Milton District.	W. Va.	Doddridge	1 21 63	Iss.
McAlester Fuel Co., et al.:					
CI63-206 Hope Natural Gas Co.	Washington District.	W. Va.	Calhoun	1 21 63	Iss.
Oscar B. McCausland, et al.:					
CI63-219 Cities Service Gas Co.	Undesignated	Okla.	Washington	1 21 63	Iss.
George B. McClellan:					
CI62-1337 Panhandle Eastern Pipe Line Co.	Undesignated	Kans.	Seward	5 29 63	Iss.
Alva McCullough, et al.:					
CI63-453 Hope Natural Gas Co.	Clay District*	W. Va.	Ritchie	3 12 63	Iss.
L. N. McCullough, et al.:					
CI62-1130 Hope Natural Gas Co.	Freemans Creek District.	W. Va.	Lewis	4 3 63	Iss.
Gerald J. McDermott:					
CI63-613 Northern Natural Gas Co.	Undesignated	Tex.	Hansford	3 12 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION
Gerald J. McDermott, Operator, et al.:					
CI63-18 Natural Gas Pipeline Co. of America.	Undesignated	Tex	Ochiltree	6 6 63	Iss.
CI63-39 Northern Natural Gas Co.	Undesignated	Tex	Ochiltree	6 6 63	Iss.
J. Ray McDermott & Co., Inc.:					
G-9823 Trunkline Gas Co.	Heard	Tex	Bee	3 21 63	Wtd.
J. Ray McDermott & Co., Inc., Operator, et al.:					
CI62-1345 Trunkline Gas Co.	Heard Ranch Field Area.	Tex	Bee	6 28 63	Iss.
Estate of T. H. McElvain:					
CI63-919 El Paso Natural Gas Co.	Ignacio-Blanco	Colo	La Plata	6 26 63	Iss.
CI63-961 El Paso Natural Gas Co.	Ignacio Dakota	Colo	La Plata	6 26 63	Iss.
Galen McKibben:					
CI63-528 Hope Natural Gas Co.	Grant District	Okla	Beaver	2 27 63	Iss.
E. B. McMurtry:					
G-20037 Colorado Interstate Gas Co.	Undesignated	Kans	Morton	4 12 63	Rej.
Magna Oil Corp., Operator, et al.:					
G-20030 Tennessee Gas Transmission Co.	North Lissie	Tex	Wharton	5 20 63	Iss.
Russell Maguire, Operator, et al.:					
CI63-277 Panhandle Eastern Pipe Line Co.	Undesignated	Okla	Beaver	1 15 63	Iss.
Mallard Petroleum, Inc., Operator, et al.:					
CI63-937 El Paso Natural Gas Co.	Ignacio-Blanco	Colo	La Plata	6 26 63	Iss.
Manco Corp., Operator, et al.:					
CI61-900 Trunkline Gas Co.	Morales Area	Tex	Jackson	3 21 63	Iss.
Manier Oil Co., Operator, Agent:					
CI63-371 Valley Gas Transmission, Inc.	Ramierena	Tex	Live Oak	3 12 63	Iss.
Marathon Oil Co.:					
CI61-830 El Paso Natural Gas Co.	Pegasus Plant	Tex	Midland*	3 21 63	Iss.
CI62-71 Texas Gas Transmission Corp.	Calhoun	La	Lincoln	5 20 63	Iss.
CI62-453 Panhandle Eastern Pipe Line Co.	Hugoton	Kans	Stevens	6 28 63	Iss.
CI63-626 Panhandle Eastern Pipe Line Co.	Avard Area	Okla	Woods	3 6 63	Rej.
Marathon Oil Co., Operator, et al:					
CI63-271 Northern Natural Gas Co.	Yates	Tex	Pecos	1 15 63	Iss.
M. H. Marr, et al.:					
CI63-433 Arkansas Louisiana Gas Co.	Chenlere Brake	La	Ouachita	2 27 63	Iss.
M. H. Marr:					
G-4085 Arkansas Louisiana Gas Co.	Cotton Valley	La	Webster	4 3 63	Dis.
The Martin Oil & Gas Co.:					
CI62-1092 Hope Natural Gas Co.	DeKalb District	W. Va.	Gilmer	6 18 63	Iss.
Mayflo Oil Co.:					
CI62-967 Northern Natural Gas Co.	Camrick Pool	Okla	Harper	6 28 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[1] DOCKET NO. AND PURCHASER [2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [3]
Mayflo Oil Co., Operator, et al.:					
CI62-1489 Cities Service Gas Co.	Northeast Waynoka.	Okla.	Woods	1 21 63	Iss.
CI63-611 Northern Natural Gas Co.	South Elwood Pool.	Okla.	Beaver	3 12 63	Iss.
J. M. Menefee, et al.					
CI63-345 Arkansas Louisiana Gas Co.	Calhoun	La.	Ouachita	3 12 63	Iss.
George B. Mertz, et al.:					
CI63-232 Hope Natural Gas Co.	Courthouse District.	W. Va.	Lewis	1 21 63	Iss.
Messman-Rinehart Oil Co., Operator, et al.:					
CI63-61 Cities Service Gas Co.	Antelope East Mississippi, Gas Pool.	Miss.	Manon	1 21 63	Iss.
Mesquite Gas Products, Inc.:					
CI60-309 El Paso Natural Gas Co.	Davis	Tex.	Upton	5 29 63	Iss.
Mid-American Minerals, Inc.:					
CI63-444 Kansas-Nebraska Natural Gas Co., Inc.	Camrick	Okla.	Beaver	2 27 63	Iss.
Mid Eastern Gas Co., Inc.:					
CI63-43 Hope Natural Gas Co.	Mannington District.	W. Va.	Marion	6 26 63	Iss.
Midhurst Oil Corp.:					
CI61-1369 Natural Gas Pipe Line Co. of America.	Boonsville Bend Conglomerate.	Tex.	Wise	4 16 63	Wtd.
CI62-1160 United Gas Pipe Line Co.	Maxie	Miss.	Forrest*	1 15 63	Iss.
Midhurst Oil Corp., Operator, et al.:					
CI62-885 Trunkline Gas Co.	Southeast Alice	Tex.	Jim Wells	6 26 63	Iss.
CI62-1097 El Paso Natural Gas Co.	Salt Lick District	Tex.	Pecos	5 29 63	Iss.
CI62-1159 Tennessee Gas Transmission Co.	Tomball Southeast	Tex.	Harris	1 15 63	Iss.
CI62-1161 Texas Illinois Natural Gas Pipeline Co.	Wette	Tex.	Victoria	1 15 63	Iss.
Midwest Oil Corp.:					
CI61-306 Michigan-Wisconsin Pipe Line Co.	Laverne	Okla.	Harper*	6 18 63	Iss.
William S. Milliener, et al.:					
CI62-389 Cities Service Gas Co.	Hugoton	Kans.	Stanton	6 6 63	Rej.
Allerton Miller:					
CI62-1358 Equitable Gas Co.	Warren District	W. Va.	Upshur	5 29 63	Iss.
CI63-364 Cumberland and Alleghany Gas Co.	Buchannon District.	W. Va.	Upshur	2 27 63	Iss.
CI63-438 Cumberland and Allegheny Gas Co.	Banks District	W. Va.	Upshur	2 27 63	Iss.
CI63-591 Cumberland and Alleghany Gas Co.	Skin Creek	W. Va.	Lewis	3 12 63	Iss.
Forest B. Miller, et al.:					
CI63-920 El Paso Natural Gas Co.	Ignacio-Blanco	Colo.	La Plata	6 26 63	Iss.
Miller & Fox Minerals Corp., Operator, et al.:					
CI62-642 Texas San Juan Oil Corp.	Miller & Fox	Tex.	Duval	6 26 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
J. L. Mills, et al.:					
CI63-355 El Paso Natural Gas Co.	San Juan	N. Mex.	San Juan	2 27 63	Iss.
Mitchel Gas Co.					
CI63-108 Hope Natural Gas Co.	Baileysville District.	W. Va.	Wyo.	6 6 63	Iss.
Mrs. Tom J. Moffitt, et al.:					
CI63-546 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	6 6 63	Iss.
Rex Monahan:					
CI62-1363 Kansas Nebraska Natural Gas Co., Inc.	Bijou	Colo.	Morgan	4 24 63	Dis.
Monla Gas Co., Inc.:					
CI61-287 Texas Gas Transmission Corp.	Monroe	La.	Union*	5 29 63	Iss.
Monsanto Chemical Co.:					
CI63-25 Northern Natural Gas Co.	Beaver City	Tex.	Beaver	1 15 63	Iss.
CI63-217 Kansas-Nebraska Natural Gas Co., Inc.	Bijou South	Colo.	Morgan	1 21 63	Iss.
Moonshine Oil & Gas Co.:					
CI63-185 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	1 21 63	Iss.
Frank Moore, et al.:					
CI63-758 Equitable Gas Co	Troy District	W. Va.	Gilmer	6 6 63	Iss.
CI63-915 Hope Natural Gas Co.	Grant District	W. Va.	Doddridge	6 26 63	Iss.
Moore Gas Co.:					
CI63-552 Hope Natural Gas Co.	Glenville District	W. Va.	Gilmer	2 27 63	Iss.
M. J. Moran, Agent:					
CI63-1232 Hope Natural Gas Co.	Court House District.	W. Va.	Lewis	6 28 63	Iss.
CI63-335 Northern Natural Gas Co.	Yater	Tex.	Pecos	2 27 63	Iss.
M. J. Moran, et al.:					
CI63-994 Hope Natural Gas Co.	Warren District	W. Va.	Upshur	6 26 63	Iss.
Fred Morgan, et al.:					
CI63-431 Northern Natural Gas Co.	Gate Area	Okla.	Beaver	2 27 63	Iss.
Frank A. Morrison, Operator:					
CI63-200 United Gas Pipe Line Co.	Cabeza Creek	Tex.	Goliad	3 12 63	Iss.
Robert Mosbacher, Operator., et al.:					
CI62-1288 Tennessee Gas Transmission Co.	North Texana	Tex.	Jackson	6 28 63	Iss.
W. H. Mossor:					
CI62-1229 Hope Natural Gas Co.	Freemans Creek District.	W. Va.	Lewis	6 28 63	Iss.
CI63-306 Hope Natural Gas Co.	Glenville District	W. Va.	Gilmer	2 27 63	Iss.
CI63-531 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	2 27 63	Iss.
CI63-540 Hope Natural Gas Co.	Hackers Creek District.	W. Va.	Lewis	2 27 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
W. H. Mossor—Continued					
CI63-601 Equitable Gas Co.	Glenville District	W. Va.	Gilmer	3 12 63	Iss.
CI63-944 Hope Natural Gas Co.	New Milton District.	W. Va.	Doddridge	6 26 63	Iss.
Mountain States Petroleum Corp.;					
CI63-290 El Paso Natural Gas Co.	Basin District	Colo.	La Plata	6 6 63	Iss.
T. L. Mullen Co.:					
CI62-279 Equitable Gas Co.	Court House District.	W. Va.	Lewis	5 17 63	Iss.
C. W. Murchison:					
CI63-65 El Paso Natural Gas Co.	Undesignated	N. Mex.	San Juan	1 21 63	Iss.
Murphy Corp., Operator, et al.:					
CI63-701 Arkansas-Louisiana Gas Co.	Lick Creek	La.	Claiborne	6 6 63	Iss.
Murphy Oil Co. of Oklahoma, Inc., Operator, et al.:					
CI62-1298 Cities Service Gas Co.	Rhodes	Kans.	Barber	2 27 63	Iss.
Mustang Operators, Inc.:					
CI62-459 United Gas Pipe Line Co.	Fagan	Tex.	Refugio	4 3 63	Iss.
Mutual Oil Co.:					
CI63-33 Hope Natural Gas Co.	Cove District	W. Va.	Gilmer*	3 12 63	Iss.
Sidney G. Myers, Jr., et al.:					
G-10194 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	4 3 63	Iss.
Nafco Oil & Gas, Inc.:					
G-18432 Tennessee Gas Transmission Co.	Blue Basin*	Tex.	Wharton*	5 20 63	Iss.
National Fuels Corp.:					
CI63-815 Lone Star Gas Co.	Madill	Okla.	Marshall	6 26 63	Iss.
Holly Nester:					
CI63-308 Hope Natural Gas Co.	Washington District.	W. Va.	Calhoun	2 27 63	Iss.
CI63-508 Hope Natural Gas Co.	Washington District.	W. Va.	Calhoun	3 12 63	Iss.
CI63-1013 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	6 26 63	Iss.
Doris W. Neustadt:					
G-8548 Arkansas-Louisiana Gas Co.	North Lansing	Tex.	Harrison	5 17 63	Iss.
Newmont Oil Co.:					
G-12948 Tennessee Gas Transmission Co.	East Cameron*	La.	Offshore	1 2 63	Iss.
Arthur L. Nicholson:					
CI62-1198 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	6 28 63	Iss.
CI63-134 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	6 6 63	Iss.
CI63-946 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	6 26 63	Iss.
M. E. Norman:					
G-9394 Undesignated	Pistol Ridge	Miss.	Pearl River	4 22 63	Rej.
North Central Oil Corp.:					
CI63-991 Valley Gas Transmission, Inc.	Bob Cooper	Tex.	Brooks	6 26 63	Iss.
Northern Natural Gas Producing Co.:					
CI61-1722 Northern Natural Gas Co.	N. Perryfield	Tex.	Ochiltree	4 3 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[#] DOCKET NO. AND PURCHASER [#]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Northwest Production Corp.:					
CI61-1542 El Paso Natural Gas Co.	Barnhart Gasoline Plant.	Tex.	Reagan	3 21 63	Iss.
Norwood Oil Co.:					
G-15490 El Paso Natural Gas Co.	Sweetie Peck	Tex.	Midland	6 26 63	Iss.
Peter Nydam, et al.:					
CI63-373 United Fuel Gas Co.	Smithfield District	W. Va.	Roane	2 27 63	Iss.
John W. O'Boyle:					
G-4113 Louisiana Nevada Transit Co.	Cotton Valley	La.	Webster	4 3 63	Dis.
G-4120 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	4 3 63	Dis.
Frances M. O'Quin:					
G-6992 Louisiana Nevada Transit Co.	Cotton Valley	La.	Webster	4 3 63	Dis.
Jane Clayton Oakes, et al.:					
G-19708 Phillips Petroleum Co.	West Panhandle	Tex.	Gray	5 20 63	Iss.
G-19710 Phillips Petroleum Co.	West Panhandle	Tex.	Gray	5 20 63	Iss.
The Ohio Oil Co.:					
G-11843 Louisiana Nevada Transit Co.	Cotton Valley	La.	Webster	4 3 63	Dis.
CI62-1476 Northern Natural Gas Co.	Corbin Area	Okla.	Beaver	1 21 63	Iss.
Oil & Gas Property, Inc., et al.:					
G-14509 Northern Natural Gas Co.	Farnsworth	Tex.	Ochiltree	5 20 63	Dis.
Oklahoma Natural Gas Co.:					
CI63-36 Arkansas Louisiana Gas Co.	Armour Webb	Okla.	Grant	1 21 63	Iss.
Oklahoma Natural Gas Co., Operator, et al.:					
CI63-695 Arkansas-Louisiana Gas Co.	Deep Chickash	Okla.	Grady	6 18 63	Iss.
Okmar Oil Co.:					
CI63-931 Hope Natural Gas Co.	Sheridan District	W. Va.	Calhoun	6 26 63	Iss.
A. G. Oliphant:					
G-18345 Louisiana Nevada Transit Co.	Cotton Valley	La.	Webster	4 3 63	Dis.
A. G. Oliphant, Operator:					
G-18347 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	4 3 63	Iss.
L. J. Onstott:					
CI63-2 Lone Star Gas Co.	Votsberger-North*	Tex	Clay*	1 21 63	Iss.
Charles A. Orwig, et al.:					
CI63-1001 Equitable Gas Co.	Troy District	W. Va.	Gilmer	6 26 63	Iss.
Ozark-Mahoning Co.:					
CI63-685 Natural Gas Pipeline Co. of America.	Camrick Southeast	Okla.	Beaver	6 6 63	Iss.
P.S. & G., Inc., Operator, et al.:					
CI61-286 Texas Gas Transmission Corp.	Monroe	La.	Union*	5 29 63	Iss.
Pace-Bower Construction Co.:					
CI63-116 Hope Natural Gas Co.	Court House District.	W. Va.	Lewis	6 6 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER [2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
John W. Pace, Operator, et al.:					
CI63-160 Texas Eastern Transmission Corp.	South Cabeza Creek.	Tex.	Goliad	1 15 63	Iss.
H. A. Pagenkopf:					
G-12694 United Gas Pipe Line Co.	South Porter Oil	Tex.	Karnes*	6 19 63	Iss.
Palm Petroleum Corp.:					
CI63-674 C. V. Lyman	Bentonville Capt. Lucey.	Tex.	Jim Wells	5 17 63	Iss.
Pampas Petroleum Co.:					
CI62-752 Hope Natural Gas Co.	Center District	W. Va.	Gilmer	5 29 63	Iss.
CI62-753 United Fuel Gas Co.	Butler District*	W. Va.	Wayne	5 29 63	Iss.
Pan American Petroleum Corp.:					
G-6999 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	4 3 63	Iss.
G-17547 Michigan, Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	4 3 63	Iss.
G-19441 Michigan-Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	6 26 63	Iss.
CI62-563 Northern Natural Pipe Line Co.	Ketchum Mountain.	Tex	Irion	6 26 63	Iss.
CI62-588 Michigan-Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	6 26 63	Iss.
CI62-589 Michigan-Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	6 26 63	Iss.
CI62-615 Arkansas Louisiana Gas Co.	Cheniere Creek	La.	Ouachita	3 12 63	Iss.
CI62-628 Northern Natural Gas Co.	Northeast Gate Lake.	Okla.	Harper	6 28 63	Iss.
CI62-630 Northern Natural Gas Co.	Six-Mile	Okla.	Beaver	6 28 63	Iss.
CI62-932 Northern Natural Gas Co.	Yates Pool	Tex	Pecos	6 6 63	Iss.
CI62-1049 Kansas-Nebraska Natural Gas Co., Inc.	Riverside	Colo.	Weld	1 15 63	Iss.
CI62-1219 Michigan Wisconsin Pipe Line Co.	Laverne Gas Area	Okla.	Harper	6 28 63	Iss.
CI62-1550 El Paso Natural Gas Co.	Ute Dome Paradox	N. Mex.	San Juan	2 5 63	Wtd.
CI62-1551 El Paso Natural Gas Co.	Bita Peak	Ariz.	Apache	2 5 63	Wtd.
CI63-21 Fort Smith Gas Co.	Cartersville	Okla.	Leflore	1 21 63	Iss.
CI63-657 El Paso Natural Gas Co.	Leveland Gasoline Plant.	Tex.	Hockley	6 19 63	Iss.
CI63-782 Hope Natural Gas Co.	Union District	W. Va.	Tyler	5 17 63	Iss.
CI63-783 Arkansas Louisiana Gas Co.	Cheniere	La.	Ouachita	5 17 63	Iss.
CI63-805 Northern Natural Gas Co.	Undesignated	Tex.	Ochiltree	6 26 63	Iss.
CI63-867 Colorado Interstate Gas Co.	Beaver Creek	Wyo.	Fremont	2 19 63	Rej.
Pan American Petroleum Corp., Operator:					
G-18660 El Paso Natural Gas Co.	Highland	Okla.	Beaver	6 19 63	Iss.
CI63-656 Natural Gas Pipeline Co. of America.	East Bay City	Tex.	Matagorda	3 12 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Pan American Petroleum Corp., Operator, et.al.:					
CI63-146 Cities Service Gas Co.	Hugoton	Kans.	Kearny	6 26 63	Iss.
Panhandle Petroleum Limited Partnership:					
CI60- 31 Colorado Interstate Gas Co.	Mocane	Okla.	Beaver	6 27 63	Iss.
CI60-147 Northern Natural Gas Co.	Perryton*	Tex.	Ochiltree	6 27 63	Iss.
CI61-356 El Paso Natural Gas Co.	Clear Lake	Okla.	Beaver	6 27 63	Iss.
CI61-549 El Paso Natural Gas Co.	North Perryton	Tex.	Ochiltree	6 27 63	Iss.
CI62-140 Bering Co.	Horizon Cleveland	Tex.	Ochiltree	6 27 63	Iss.
R. S. Parker and Charlie Hurd:					
CI63-454 Equitable Gas Co.	Undesignated	W. Va.	Clay	3 12 63	Iss.
Irving Pasternak:					
CI62-440 El Paso Natural Gas Co.	Undesignated	N. Mex.	Rio Arriba	4 3 63	Iss.
CI63-165 El Paso Natural Gas Co.	San Juan Basin	N. Mex.	Rio Arriba	1 21 63	Iss.
Carroll T. Payne, et al.:					
CI63-248 Hope Natural Gas Co.	Grant District	W. Va.	Harrison	1 15 63	Iss.
Peake Petroleum Co.:					
CI63-40 Arkansas Louisiana Gas Co.	Undesignated	Okla.	Grady	1 21 63	Iss.
Willard Pease Drilling Co., Operator, et al.:					
CI63- 95 Grand Valley Transmission Co.	Undesignated	Utah	Grand	6 6 63	Iss.
Peel-Hardman Oil Operators, Operator, et al.:					
CI63-625 Cities Service Gas Co.	Brook	Kans.	Barber	3 12 63	Iss.
Pemco Gas, Inc.:					
CI63-176 Hope Natural Gas Co.	Skin Creek District	W. Va.	Lewis	1 15 63	Iss.
E. G. Pence, et al.:					
CI63-330 Hope Natural Gas Co.	Spencer District	W. Va.	Roane	2 27 63	Iss.
CI63-331 Hope Natural Gas Co.	Clay District	W. Va.	Ritchie	2 27 63	Iss.
G. E. Penn, Operator, et al.:					
CI63-357 Lone Star Gas Co.	Henderson	Tex.	Rusk	2 27 63	Iss.
H. W. Perritt:					
G-4956 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	4 3 63	Iss.
Petroleum Exploration, Inc. of Texas:					
CI60-739 Northern Natural Gas Co.	Undesignated	Tex.	Ochiltree	6 28 63	Iss.
Petroleum Exploration, Inc. of Texas, et al.:					
CI62-1210 Northern Natural Gas Co.	Dude Wilson	Tex.	Roberts	1 15 63	Iss.
Petroleum Exploration Inc. of Texas, Operator, et al.:					
CI63-284 Natural Gas Pipeline Co. of America.	Quinduno	Tex.	Roberts	6 18 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION 1
Petroleum Management, Inc., Operator, et al.:					
CI61-347 Gas Transmission, Inc.	Undesignated	Kans.	Cowley	6 28 63	Iss.
Petroleum Offshore Leaseholds, Inc., Operator, et al.:					
G-19010 Transcontinental Gas Pipe Line Corp.	Eugene Island Area	La.	Offshore	3 12 63	Iss.
Petroleum Promotions, Inc.:					
CI63-230 Hope Natural Gas Co.	Cove District	W. Va.	Doddridge	1 21 63	Iss.
CI63-518 Hope Natural Gas Co.	Central District	W. Va.	Doddridge	3 12 63	Iss.
CI63-519 Hope Natural Gas Co.	New Milton District.	W. Va.	Doddridge	3 12 63	Iss.
CI63-539 Hope Natural Gas	Troy District	W. Va.	Gilmer	2 27 63	Iss.
CI63-981 Hope Natural Gas Co.	Hackers Creek District.	W. Va.	Lewis	6 26 63	Iss.
H. H. Phillips, Jr., et al.:					
CI63-586 Natural Gas Pipeline Co. of America.	Undesignated	Tex.	Jim Wells*	3 12 63	Iss.
CI63-587 Tennessee Gas Transmission Co.	Seeligson	Tex.	Jim Wells	3 12 63	Iss.
CI63-588 Transcontinental Gas Pipe Line Corp.	La Gloria	Tex.	Jim Wells*	3 12 63	Iss.
H. H. Phillips, et al.:					
CI63-740 El Paso Natural Gas Co.	Allison Unit*	N. Mex.	San Juan*	5 17 63	Iss.
Phillips Petroleum Co.:					
CI62-1249 Northern Natural Gas Co.	Panhandle	Tex.	Hutchinson	1 15 63	Iss.
CI62-1462 Northern Natural Gas Co.	Benedum Plant	Tex.	Upton	1 15 63	Iss.
CI63-752 Arkansas-Louisiana Gas Co.	Deep Chickash	Okla.	Grady	6 18 63	Iss.
CI63-1004 Cities Service Gas Co.	Laketon	Tex.	Gray	6 26 63	Iss.
CI63-1008 Arkansas Louisiana Gas Co.	Arkoma Area	Okla.	Pittsburgh	6 21 63	Iss.
Phillips Petroleum Co., Operator:					
CI63-648 Northern Natural Gas Co.	Undesignated	Tex*	Ochiltree*	3 12 63	Iss.
Philmore Oil Co., Inc.:					
CI63-304 El Paso Natural Gas Co.	Undesignated	Tex.	Nolan	6 6 63	Iss.
Pioneer Petroleum, Inc.:					
CI62-1191 Hope Natural Gas Co.	Hackers Creek District.	W. Va.	Lewis	6 28 63	Iss.
CI63-319 Hope Natural Gas Co.	Freemans Creek District.	W. Va.	Lewis	2 27 63	Iss.
CI63-320 Hope Natural Gas Co.	Warren District	W. Va.	Upshur	2 27 63	Iss.
CI63-1061 Hope Natural Gas Co.	Freemans Creek District.	W. Va.	Lewis	6 18 63	Iss.
Pioneer Production Corp.:					
CI63-100 Northern Natural Gas Co.	McKinney	Kans.	Meade*	6 6 63	Iss.
CI63-764 Northern Natural Gas Co.	Como South	Okla.	Beaver	5 17 63	Iss.
CI63-1236 Panhandle Eastern Pipe Line Co.	Undesignated	Kans.	Morton	4 25 63	Rej.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Pioneer Production Corp., Operator:					
G–18553 El Paso Natural Gas Co.	Undesignated	Okla	Beaver	6 19 63	Iss.
John Douglas Pitman, Operator:					
CI63–597 Northern Natural Gas Co.	Novi Lime	Tex	Ochiltree	3 12 63	Iss.
Pittman Oil Co.:					
CI63–1007 Northern Natural Gas Co.	Farnsworth	Tex	Ochiltree	6 26 63	Iss.
The Pittston Co.:					
CI62–1046 Equitable Gas Co	Undesignated	W. Va	Clay	5 20 63	Iss.
Placid Oil Co.:					
CI61–1449 Emory M. Spencer	Fulton Beach	Tex	Aransas	5 17 63	Iss.
Placid Oil Co., Operator, et al.:					
G–14679 H. L. Hunt	Whelen	Tex	Harrison	6 18 63	Iss.
G–14681 H. L. Hunt	North Lansing	Tex	Harrison	6 18 63	ISs.
Perry S. Poffenbarger, et al.:					
CI63–7 United Fuel Gas Co	Smithfield District	W. Va	Roane	5 29 63	Iss.
Clarence Powell, et al.:					
CI63–205 Hope Natural Gas Co.	New Milton District.	W. Va	Doddridge	1 21 63	Iss.
M. F. Powers:					
G–9773 Cities Service Gas Co	Hugoton	Kans	Kearny	5 7 63	Rej.
Prado Oil & Gas Co.:					
CI63–125 Northern Natural Gas Co.	East Camrick	Okla	Beaver	2 27 63	Iss.
CI63–126 Natural Gas Pipeline Co. of America.	S. E. Camrick	Okla	Beaver	2 27 63	Iss.
Robert B. Prentice, Operator, et al.:					
CI60–431 United Gas Pipe Line Co.	Hollywood	La	Terrebonne	1 8 63	Dis.
The Preston Oil Co.:					
CI63–724 The Manufacturers Light & Heat Co.	Center District	W. Va	Wetzel	6 6 63	Iss.
Ferrell L. Prior:					
CI63–1090 Hope Natural Gas Co.	New Milton District.	W. Va	Doddridge	8 18 63	Iss.
Producing Properties, Inc.:					
CI61–919 El Paso Natural Gas Co.	Jalmat*	N. Mex	Lea	2 27 63	Iss.
Producing Properties, Inc., Operator, et al.:					
G–15052 Mississippi River Fuel Corp.	Woodlawn	Tex	Harrison	6 26 63	Iss.
Producing Royalties, Inc.:					
CI62–1273 El Paso Natural Gas Co.	Fulcher-Kutz Pictured Cliffs.	N. Mex	San Juan	5 29 63	Iss.
E. Joe Pruitt, Operator:					
CI62–169 United Gas Pipe Line Co.	Karen Beauchamp	Tex	Goliad	4 3 63	Iss.
The Pure Oil Co.:					
CI63–215 Arkansas Louisiana Gas Co.	Red Oak	Okla	Latimer*	6 21 63	Iss.
CI63–1002 Colorado Interstate Gas Co.	Wind River Basin	Wyo	Fremont*	2 21 63	Rej.
The Pure Oil Co., et al.:					
G–18438 Florida Gas Transmission Co.	Sharyland	Tex	Hidalgo	4 24 63	Dis.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Quaker State Oil Refining Corp.:					
CI61-706 South Penn Oil Co.	Greene District*	W. Va.	Wetzel	6 19 63	Iss.
A. C. Radford, et al.:					
CI62-1131 Hope Natural Gas Co.	Court House District.	W. Va.	Lewis	4 3 63	Iss.
Ramada Oil & Gas Co., Agent:					
CI62-1020 Banquete Gas Co., a Division of Crestmont.	Spartan*	Tex.	San Patricio	6 18 63	Iss.
CI62-1563 Banquete Gas Co., a Division of Crestmont.	Spartan*	Tex.	San Patricio	6 18 63	Iss.
Bernard A. Ray, Operator, et al.:					
CI63-1031 El Paso Natural Gas Co.	House Drinkard	N. Mex.	Lea	6 18 63	Iss.
Mrs. Lucie L. Ray, et al.:					
CI61-846 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	3 21 63	Iss.
Raymond Oil Co., et al:					
CI63-503 Cities Service Gas Co.	Undesignated	Okla.	Kay	3 12 63	Iss.
A. H. Reber Co.:					
CI62-1116 Hope Natural Gas Co.	Union District	W. Va.	Tyler	4 3 63	Iss.
E. E. Reigle:					
G-17954 El Paso Natural Gas Co.	Langley-Mattix	N. Mex.	Lea	6 26 63	Iss.
Renappi Corp.:					
G-12992 Arkansas Louisiana Gas Co.	Bethany	Tex.	Panola	4 24 63	Dis.
Renappi Corp., Operator:					
G-12993 Tennessee Gas Transmission Co.	Bethany	Tex.	Panola	6 19 63	Iss.
G-12994 Texas Eastern Transmission Corp.	South Hallsville	Tex.	Harrison	6 19 63	Iss.
Renappi Corp., Operator, et al.:					
G-13000 Tennessee Gas Transmission Co.	Bethany	Tex.	Panola	6 19 63	Iss.
William B. Rezek, et al.:					
CI63-945 Hope Natural Gas Co.	Grant District	W. Va.	Ritchie	6 26 63	Iss.
A. L. Rhodes, et al.:					
CI63-639 El Paso Natural Gas Co.	Noelke	Tex.	Crockett	3 12 63	Iss.
A. L. Rhodes, Operator, et al.:					
CI63-1011 El Paso Natural Gas Co.	West Texas Noelke	Tex.	Crockett	6 18 63	Iss.
Rhodes & Hicks Drilling Corp., et al.:					
CI61-1400 Valley Gas Transmission, Inc.	North Magnolia	Tex.	Jim Wells	5 20 63	Iss.
Riddell Petroleum Corp.:					
G-18609 El Paso Natural Gas Co.	Highland	Okla.	Beaver	6 19 63	Iss.
Ridgely, Inc.:					
CI63-729 Northern Natural Gas Co.	Farnsworth	Tex.	Ochiltree	6 6 63	Iss.
Ridgeway & Morrison:					
CI62-1195 Panhandle Eastern Pipe Line Co.	Taylor Lease	Okla.	Beaver	6 28 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
R. W. Rine Drilling Co., Operator, et al.:					
CI63-767 Cities Service Gas Co.	Doby Springs	Okla.	Harper	5 17 63	Iss.
Robbins Petroleum Corp., Operator, et al.:					
CI62-1313 Lone Star Gas Co.	Danville	Tex.	Rusk*	6 28 63	Iss.
CI63-19 Lone Star Gas Co.	Henderson	Tex.	Rusk	6 6 63	Iss.
CI63-759 Lone Star Gas Co.	Peatown	Tex.	Gregg	5 17 63	Iss.
CI63-760 Lone Star Gas Co.	Danville	Tex.	Gregg	6 17 63	Iss.
CI63-909 Lone Star Gas Co.	Peatown	Tex.	Gregg*	6 26 63	Iss.
D. D. Roberts:					
CI63-532 Hope Natural Gas Co.	Union District	W. Va.	Ritchie	2 27 63	Iss.
John R. Robinson:					
CI62-1042 Equitable Gas Co.	Dekalb	W. Va.	Gilmer	4 3 63	Iss.
E. G. Rodman and W. D. Noel:					
CI63-525 El Paso Natural Gas Co.	Spraberry Trend Area.	W. Va.	Upton	3 12 63	Iss.
Lendol Rogers, et al.:					
CI63-593 Hope Natural Gas Co.	Washington District.	W. Va.	Calhoun	3 13 63	Iss.
W. Leslie Rogers:					
CI63-332 Equitable Gas Co.	Glenville District	W. Va.	Gilmer	2 27 63	Iss.
Roy B. Rollins:					
CI63-542 Hope Natural Gas Co.	Hackers Creek District*	W. Va.	Lewis	2 27 63	Iss.
CI63-940 Hope Natural Gas Co.	Court House District.	W. Va.	Lewis	6 26 63	Iss.
S. D. Rorem:					
CI63-561 Lone Star Gas Co.	Katie	Okla.	Garvin	3 12 63	Iss.
Ross Petroleum, Inc., Operator, et al.:					
CI63-713 Phillips Petroleum Co.	Texas Hugoton	Tex.	Sherman	5 17 63	Iss.
Rouse Well Service, Operator, et al.:					
G-19077 Trunkline Gas Co.	Maetze	Tex.	Goliad	5 20 63	Iss.
A. M. Rozeman, et al.:					
CI63-1019 Arkansas Louisiana Gas Co.	Waskom	Tex.	Panola	6 26 63	Iss.
M. B. Rudman, Operator.:					
CI62-1057 El Paso Natural Gas Co.	Basin Dakota Field	N. Mex.	San Juan	4 3 63	Iss.
A. W. Rutter, et al.:					
CI63-1144 El Paso Natural Gas Co.	Spraberry Trend	Tex.	Upton	6 18 63	Iss.
Rutter & Wilbanks Bros. & Rutter & Co., Ltd.:					
CI63-1145 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex.	Upton	6 18 63	Iss.
St. Clair Oil Co.:					
CI63-180 Equitable Gas Co.	Collins Settlement District.	W. Va.	Lewis	1 15 63	Iss.
St. Helens Petroleum Corp.:					
CI63-194 Mountain Fuel Supply Co.	State Line	Wyo.	Carbon*	4 22 63	Iss.
Samedan Oil Corp.:					
G-14896 El Paso Natural Gas Co.	Drinkard	N. Mex.	Lea	6 19 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[1] DOCKET NO. AND PURCHASER [2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[3]
Samedan Oil Corp., et al.:					
CI63-285 Northern Natural Gas Co.	South Plainview	Okla.	Beaver	6 6 63	Iss.
W. G. Sampson, et al.:					
CI62-1118 Hope Natural Gas Co.	Washington District.	W. Va.	Calhoun	4 3 63	Iss.
Marshall R. Sanguinet:					
CI63-246 Valley Gas Transmission, Inc.	Hinnant	Tex.	Live Oak	6 6 63	Iss.
Louis Sannito, et al.:					
CI63-592 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	3 12 63	Iss.
Santiago Oil & Gas Co.:					
CI63-105 Southern Coast Corp.	Tiger	Tex.	Duval	5 29 63	Iss.
CI63-106 Southern Coast Corp.	Tiger	Tex.	Duval	5 29 63	Iss.
Duncan Sartain & Douglas D. Williams:					
CI63-212 Equitable Gas Co.	West Union District.	W. Va.	Doddridge	1 21 63	Iss.
CI63-964 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	6 26 63	Iss.
Duncan Sartain, et al.:					
CI63-1063 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	8 18 63	Iss.
Schermerhorn Oil Corp., Operator:					
CI63-485 Cities Service Gas Co.	North Gerke	Kans.	Pratt	3 12 63	Iss.
Frank A. Schultz, et al.:					
CI63-318 El Paso Natural Gas Co.	Dakota Gas Pools	N. Mex.	San Juan	6 6 63	Iss.
James F. Scott, et al.:					
CI63-445 Hope Natural Gas Co.	Sardis District	W. Va.	Harrison	2 27 63	Iss.
CI63-446 Hope Natural Gas Co.	Grant District	W. Va.	Doddridge	2 27 63	Iss.
O. L. Scott, Operator:					
CI62-1045 Kansas-Nebraska Natural Gas Co., Inc.	Poe Area	Colo.	Morgan	4 3 63	Iss.
Joseph E. Seagram & Sons, Inc., Operator, et al.:					
CI62-1251 Arkansas Louisiana Gas Co.	Red Oak	Okla.	Latimer	6 21 63	Iss.
Henry Sears:					
G-3754 Louisiana Nevada Transit Co.	Cotton Valley	La.	Webster	4 3 63	Dis.
G-3755 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	4 3 63	Dis.
Hughes Seewald, et al.:					
CI63-162 Colorado Interstate Gas Co.	Undesignated	Okla.	Cimarron	4 3 63	Wtd.
Service Gas Products Co., Operator:					
CI63-577 Lone Star Gas Co.	Doyle	Okla.	Stephens	3 12 63	Iss.
CI63-833 Cities Service Gas Co.	East Clark*	Okla.	Harper	6 26 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[#] DOCKET NO. AND PURCHASER [#]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
The Shamrock Oil & Gas Corp.:					
CI63-428 Natural Gas Pipeline Co. of America.	Camrick Southeast Pool.	Okla.	Beaver	2 27 63	Iss.
CI63-429 Natural Gas Pipeline Co. of America.	Camrick Southeast Pool.	Okla.	Beaver	2 27 63	Iss.
CI63-636 Natural Gas Pipeline Co. of America.	Camrick S.E. Gas Pool.	Okla.	Beaver	3 12 63	Iss.
Donald Sharp, et al.:					
CI62-1468 N. J. Riley, et al.	Spartan	Tex.	San Patricio	6 6 63	Iss.
Donald Sharp & Gulf Sands Oil Co., Operator, et al.:					
CI62-1346 Banquete Gas Co., A Division of Crestmont.	Spartan*	Tex.	San Patricio	6 18 63	Iss.
Sheep Run Oil & Gas Co.:					
CI63-817 Penova Interests	Grant District	W. Va.	Ritchie	5 17 63	Iss.
Joseph S. Sheldon, Jr.:					
CI63-807 Transcontinental Gas Pipe Line Corp.	Gueydon	La.	Vermilion	6 18 63	Iss.
Shell Oil Co.:					
G-17560 Hope Natural Gas Co.	Bayou Pigeon	Tex.	Iberia	3 13 63	Iss.
CI62-1318 Texas Eastern Transmission Corp.	Sarah White East	Tex.	Galveston	6 28 63	Iss.
CI62-1330 El Paso Natural Gas Co.	Glenord Queens South.	N. Mex.	Lea	5 29 63	Iss.
CI63-181 Oklahoma Natural Gas Gathering Corp.	Ringwood	Okla.	Major	1 15 63	Iss.
CI63-467 Arkansas Louisiana Gas Co.	Cheniere Creek	La.	Ouachita	2 27 63	Iss.
CI63-1106 Panhandle Eastern Pipe Line Co.	Avard*	Okla.	Woods*	3 27 63	Rej.
Shell Oil Co., Operator:					
G-17888 El Paso Natural Gas Co.	Clear Lake*	Okla.	Beaver	6 19 63	Iss.
CI63-1041 Northern Natural Gas Co.	Tippett Gasoline Plant.	Tex.	Crockett	6 18 63	Iss.
Shell Oil Co., Operator, et al.:					
CI63-276 Northern Natural Gas Co.	Checker Board Area.	Okla.	Beaver	1 15 63	Iss.
G. Frederick Shepherd:					
CI63-671 South Texas Natural Gas Gathering Co.	Cano	Tex.	Hidalgo	5 17 63	Iss.
Fred W. Shield:					
CI63-821 United Gas Pipe Line Co.	Burnell	Tex.	Karnes*	3 7 63	Wtd.
The Sidwell Corp.:					
CI63-648 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	6 6 63	Iss.
Sigma Exploration Corp., Operator, et al.:					
CI63-629 Warren Petroleum Corp.	East Panhandle	Tex.	Wheeler	5 17 63	Iss.
Signal Oil & Gas Co:					
CI63-691 Tennessee Gas Transmission Co.	West Bishop	Tex.	Nueces	5 17 63	Iss.
Maxwell D. Simmons, Operator, et al.:					
CI63-544 Lone Star Gas Co.	Danville	Tex.	Gregg*	2 27 63	Iss.

See footnotes at end of table. p. 1358

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[#] DOCKET NO. AND PURCHASER [#]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[4]
Sinclair Oil & Gas Co.:					
CI62-1184 Arkansas Louisiana Gas Co.	Wilburton*	Okla.	Latimer*	6 21 63	Iss.
CI63-538 Cities Service Gas Co.	N. W. Lovedale	W. Va.	Harper	3 12 63	Iss.
CI63-578 Natural Gas Pipeline Co. of America	Camrick S. E.	Okla.	Beaver	3 12 63	Iss.
CI63-603 Lone Star Gas Co.	East Doyle	Okla.	Stephens	6 28 63	Iss.
Sinclair Oil & Gas Co., Operator:					
G-18748 El Paso Natural Gas Co.	Undesignated	Okla*	Beaver*	6 19 63	Iss.
Sinclair Oil & Gas Co., Operator, et al.:					
CI61-334 Florida Gas Transmission Co.	Palacios	Tex.	Matagorda	1 21 63	Iss.
Joseph B. Singer, Operator, et al.:					
CI62-636 Arkansas Louisiana Gas Co.	Darley	La.	Claiborne	5 29 63	Iss.
Sinster Development Co.:					
CI63-778 Equitable Gas Co.	DeKalb District	W. Va.	Gilmer	5 17 63	Iss.
Robert J. Sipoha, et al.:					
G-18776 Hope Natural Gas Co.	Grant*	W. Va.	Pheasants*	5 20 63	Iss.
Raymond R. Sirkle, Trustee:					
CI63-297 Kentucky West Virginia Gas Co.	Middle Creek	Ky.	Floyd	1 15 63	Iss.
CI63-565 Columbian Fuel Corp.	Undesignated	Ky.	Floyd	2 27 63	Iss.
CI63-971 Columbian Fuel Corp.	Bull Creek	Ky.	Floyd	6 26 63	Iss.
Skelly Oil Co.:					
G-13240 Texas Eastern Transmission Corp.	Tatum-Rush	Tex.	Rush*	5 17 63	Iss.
CI61-731 Northern Natural Gas Co.	Born Unit	Kans.	Clark	5 20 63	Iss.
CI63-426 Arkansas Louisiana Gas Co.	Cheniere Brake	La.	Ouachita	2 27 63	Iss.
CI63-478 Natural Gas Pipeline Co. of America.	Camrick Southeast Gas Pool.	Okla.	Beaver	3 12 63	Iss.
Skelly Oil Co., Operator:					
G-14477 Kansas-Nebraska Natural Gas Co., Inc.	Pannes Hills	Colo.	Logan	6 26 63	Iss.
Sam Sklar, Trustee:					
G-4207 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	4 3 63	Iss.
Smith & Smith, Operator, et al.:					
CI61-1467 Valley Gas Transmission, Inc.	Southwest Pheasant	Tex.	Matagorda	5 20 63	Iss.
Carl E. Smith, Inc.:					
CI63-984 Hope Natural Gas Co.	Grant District	W. Va.	Doddridge	6 26 63	Iss.
Carl M. Smith:					
CI60-140 Colorado Interstate Gas Co.	Keyes	Okla.	Cimarron	6 18 63	Iss.
Smith Development Co., Operator.:					
CI63-570 Northern Natural Gas Co.	Smith Perryton	Tex.	Ochiltree	3 12 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[#] DOCKET NO. AND PURCHASER [#]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Jas. F. Smith Operator, et al.:					
CI63-677 Kansas-Nebraska Natural Gas Co., Inc.	Dombey	Okla.	Beaver	6 6 63	Iss.
Louis J. Smith:					
CI62-1180 Equitable Gas Co.	Otter District	W. Va.	Braxton	4 3 63	Iss.
Smith Operating & Management Co.:					
CI63-103 United Gas Pipe Line Co.	Joaquin	Tex.	Shelby*	5 29 63	Iss.
Walter E. Smith:					
CI63-493 Cabot Corp.	Sherman District	W. Va.	Calhoun	3 12 63	Iss.
CI63-494 Cabot Corp.	Sherman District	W. Va.	Calhoun	3 12 63	Iss.
CI63-495 Cabot Corp.	Sherman District	W. Va.	Calhoun	3 12 63	Iss.
CI63-496 Cabot Corp.	Sherman District	W. Va.	Calhoun	3 12 63	Iss.
CI63-497 Cabot Corp.	Sherman District	W. Va.	Calhoun	3 12 63	Iss.
CI63-498 Cabot Corp.	Rowels Run*	W. Va.	Calhoun	3 12 63	Iss.
Walter E. Smith, et al.:					
CI63-622 Cabot Corp.	Sherman District*	W. Va.	Calhoun	6 6 63	Iss.
CI63-623 Cabot Corp.	Sherman District	W. Va.	Calhoun	6 6 63	Iss.
William E. Snee, et al.:					
CI61-1743 The Manufactures Light & Heat Co.	Undesignated	Pa.	Fayette	4 3 63	Iss.
Socony Mobil Oil Co., Inc.:					
G-13827 Tennessee Gas Transmission Co.	Vermilion Block 46*	La.	Offshore	1 2 63	Iss.
G-20610 El Paso Natural Gas Co.	Tip Top*	Wyo.	Sublette*	3 21 63	Iss.
CI60-568 United Gas Pipe Line Co.	Lisbon	Tex.	Claiborne	5 20 63	Iss.
CI62-1187 El Paso Natural Gas Co.	Piceance Creek	Colo.	Rio Blanco	5 29 63	Iss.
CI63-234 Arkansas Louisiana Gas Co.	Red Oak	Okla.	Latimer*	5 21 63	Iss.
CI63-464 Transcontinental Gas Pipe Line Corp.	La Gloria	Tex.	Jim Wells*	3 12 63	Iss.
CI63-466 Tennessee Gas Transmission Co.	Seeligson	Tex.	Jim Wells	3 12 63	Iss.
CI63-470 Natural Gas Pipeline Co. of America.	Undesignated	Tex.	Jim Wells*	3 12 63	Iss.
CI63-558 United Gas Pipe Line Co.	Burnell-Karnes	Tex.	Bee*	6 18 63	Iss.
CI63-609 Mountain Fuel Supply Co.	State Line	Wyo.	Carbon*	4 22 63	Iss.
CI63-742 Northern Natural Gas Co.	N. E. Ivanhoe	Okla.	Beaver	6 6 63	Iss.
CI63-975 El Paso Natural Gas Co.	San Juan Basin	N. Mex.	La Plata	6 26 63	Iss.
Sohio Petroleum Co.:					
CI63-411 Northern Natural Gas Co.	Mocane*	Okla.	Beaver	2 27 63	Iss.
CI63-456 Champlin Oil & Refining Co.	Lockridge	Okla.	Logan	6 6 63	Iss.
Sohio Petroleum Co., et al.:					
CI63-514 El Paso Natural Gas Co.	Spraberry	Tex.	Upton	6 6 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[3] DOCKET NO. AND PURCHASER [3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[4]
Sohio Petroleum Co., Operator, et al.:					
CI62-1266 Trunkline Gas Co.[6]	Undesignated	Tex.	Jim Wells[6]	5 29 63	Iss.
CI62-1523 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex.	Upton	6 6 63	Iss.
Sooner Pipe & Supply Corp., et al.:					
CI63-673 Cities Service Gas Co.	Sporn	Okla.	Lincoln	6 26 63	Iss.
South Texas Development Co., Operator:					
CI61-1773 Kansas - Nebraska Natural Gas Co., Inc.	Surveyor Creek	Colo.	Washington	3 21 63	Iss.
Southdown, Inc., Operator, et al.:					
CI63-906 Texas Gas Transmission Corp.	Canton	La.	San Landry	6 26 63	Iss.
Southern Petroleum Exploration, Inc.:					
CI63-375 El Paso Natural Gas Co.	Undesignated	N. Mex.	Rio Arriba	2 27 63	Iss.
Southern Triangle Oil, Inc.:					
CI62-1126 Hope Natural Gas Co.	Cove District	W. Va.	Doddridge	4 3 63	Iss.
CI62-1134 Hope Natural Gas Co.	West Union District.	W. Va.	Doddridge	4 3 63	Iss.
CI63-99 Hope Natural Gas Co.	New Milton District.	W. Va	Doddridge	6 6 63	Iss.
CI63-183 Hope Natural Gas Co.	New Milton District.	W. Va.	Doddridge	1 21 63	Iss.
CI63-187 Hope Natural Gas Co.	Cove District	W. Va.	Doddridge	1 21 63	Iss.
CI63-922 Hope Natural Gas Co.	Greenbrier District.	W. Va.	Doddridge	6 26 63	Iss.
CI63-935 Hope Natural Gas Co.	Center District	W. Va.	Gilmer	6 26 63	Iss.
CI63-1053 Hope Natural Gas Co.	Union District	W. Va.	Barbour	6 18 63	Iss.
Southland Royalty Co.:					
CI60-226 Michigan-Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	6 28 63	Iss.
Southwestern Development Co.:					
CI63-408 South Penn Natural Gas Co.	Burning Springs District.	W. Va.	Wirt	2 27 63	Iss.
R. B. Stallworth, Jr.:					
CI62-292 Hope Natural Gas Co.	Union	W. Va.	Clay	5 20 63	Iss.
CI63-1006 United Fuel Gas Co.	Union District	W. Va.	Clay	6 26 63	Iss.
Standard Oil & Gas, Inc.:					
CI62-1464 Hope Natural Gas Co.	Salt Lick District	W. Va.	Braxton	6 6 63	Iss.
CI63-572 Equitable Gas Co.	Collins District	W. Va.	Lewis	3 12 63	Iss.
Standard Oil Co., of Texas, a Division of California Oil Co.:					
CI63-280 El Paso Natural Gas Co.	North Pucket	Tex.	Pecos	5 17 63	Iss.
Stanton Oil Co., Ltd.:					
CI61-340 El Paso Natural Gas Co.	Levelland	Tex.	Cochran	4 3 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[#] DOCKET NO. AND PURCHASER [#]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Star Oil & Gas Co.:					
CI63-913 Hope Natural Gas Co.	DeKalb District	W. Va.	Gilmer	6 26 63	Iss.
Star Oil & Gas Co., et al.:					
CI63-251 Hope Natural Gas Co.	DeKalb District	W. Va.	Gilmer	1 15 63	Iss.
D. W. Steele, et al.:					
CI62-291 Hope Natural Gas Co.	Spencer	W. Va.	Roane	5 20 63	Iss.
Stekoll Petroleum Corp., et al.:					
CI63-258 Panhandle Eastern Pipe Line Co.	Mocane	Colo.	Beaver	1 15 63	Iss.
Richard M. Stevens, et al.:					
CI63-345 Valley Gas Transmission, Inc.	Terrell Point Area	Tex.	Goliad	5 17 63	Iss.
Paul Stock:					
CI63-75 El Paso Natural Gas Co.	San Juan Basin	Okla.	Le Flore	1 21 63	Iss.
Stonestreet Lands Co.:					
CI62-1121 Hope Natural Gas Co.	Lee District	W. Va.	Calhoun	4 3 63	Iss.
CI63-184 Hope Natural Gas Co.	Lee District	W. Va.	Calhoun	1 21 63	Iss.
CI63-973 Hope Natural Gas Co.	Troy District	W. Va.	Gilmer	6 26 63	Iss.
Stream, Inc., et al.:					
CI63-976 Texas Eastern Transmission Corp.	North Hostetter	Tex.	McMullen	6 26 63	Iss.
C. A. Stricklin:					
CI63-505 Hope Natural Gas Co.	Clay District	W. Va.	Ritchie	3 12 63	Iss.
C. A. Stricklin, et al.:					
CI63-568 Hope Natural Gas Co.	Union District	W. Va.	Ritchie	2 27 63	Iss.
Sun Oil Co.:					
CI62-1352 Arkansas Louisiana Gas Co.	North Scottsville	Tex.	Harrison	5 17 63	Iss.
CI63-35 El Paso Natural Gas Co.	Pandale	Tex.	Crockett	1 21 63	Iss.
CI63-472 Texas Eastern Transmission Corp.	Appling	Tex.	Calhoun	2 27 63	Iss.
Sunac Petroleum Corp.:					
CI60-406 Northern Natural Gas Co.	Guymon-Hugoton*	Tex.	Beaver*	5 20 63	Iss.
CI61-222 El Paso Natural Gas Co.	Southeast Farnsworth.	Tex.	Ochiltree	6 27 63	Iss.
CI61-609 Northern Natural Gas Co.	South Six Mile	Okla.	Beaver	6 27 63	Iss.
Sunac Petroleum Corp., et al.:					
CI61-1180 Colorado Interstate Gas Co.	Mocane	Okla.	Beaver	5 29 63	Iss.
Sunray DX Oil Co.:					
G-15800 El Paso Natural Gas Co.	Twin Mounds Area	N. Mex.*	San Juan	5 17 63	Iss.
G-16104 Northern Natural Gas Co.	Guymon-Hugoton	Okla.	Texas	6 28 63	Iss.
CI63-150 Northern Natural Gas Co.	Undesignated	Okla.	Beaver*	1 15 63	Iss.
CI63-554 Kansas-Nebraska Natural Gas Co., Inc.	Minto	Colo.	Logan	2 27 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER, # DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Sunray DX Oil Co.—Continued					
CI63-721 Texas Eastern Transmission Corp.	Karon	Tex.	Live Oak	6 6 63	Iss.
CI63-889 Colorado Interstate Gas Co.	Laverne	Okla.	Harper	6 26 63	Iss.
Sunray Mid-Continent Oil Co.:					
G-17461 United Gas Pipe Line Co.	Corpus Christi	Tex.	Nueces	4 22 63	Iss.
Sunset International Petroleum Corp., Operator:					
CI63-421 Arkansas Louisiana Gas Co.	East Lemont	Okla.	Grant	3 12 63	Iss.
Sunset International Petroleum Corp., Operator, et al.:					
G-14129 Cities Service Gas Co.	S.W. Mount Vernon*.	Okla.	Lincoln	6 28 63	Iss.
The Superior Oil Co.:					
CI60-328 El Paso Natural Gas Co.	Undesignated	Okla.	Beaver	6 19 63	Iss.
Sutton Producing Co., Agent Operator, et al.:					
CI61-72 Transcontinental Gas Pipe Line Corp.	South Tilden	Tex.	McMullen	5 20 63	Iss.
CI63-1039 Valley Gas Transmission, Inc.	East George West	Tex.	Live Oak	6 18 63	Iss.
Sylvester Anderson Oil Co., Inc.:					
CI63-208 Hope Natural Gas Co.	Pleasants District	W. Va.	Clay	1 21 63	Iss.
B. E. Talkington, et al.:					
CI63-1077 Hope Natural Gas Co.	Meade District	W. Va.	Upshur	6 18 63	Iss.
Target Drilling Corp.:					
CI62-1391 Arkansas Louisiana Gas Co.	East Kremlin	Okla.	Garfield	1 21 63	Iss.
W. Howard Taylor, et al.:					
CI63-905 United Fuel Gas Co.	Henry District	W. Va.	Clay	6 18 63	Iss.
W. H. Taylor Estate:					
G-19711 Phillips Petroleum Co.	West Panhandle	Tex.	Gray	5 20 63	Iss.
W. H. Taylor Oil Co., et al.:					
G-19712 Phillips Petroleum Co.	West Panhandle	Tex.	Gray	5 20 63	Iss.
R. A. Teichman, Jr., et al.:					
CI63-422 Equitable Gas Co.	Meade District*	W. Va.	Upshur	2 27 63	Iss.
Tekoil Corp.:					
CI61-1060 Hugoton Plains Gas & Oil Co.	Guymon-Hugoton	Okla.	Texas	6 19 63	Iss.
Tenneco Corp.:					
CI62-159 Texas Eastern Transmission Corp.	Bomba	Tex.	Goliad	5 17 63	Iss.
CI62-463 El Paso Natural Gas Co.	Kutz Dakota	N. Mex.	San Juan	5 29 63	Iss.
CI62-557 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	4 3 63	Iss.
CI62-895 Cities Service Gas Co.	Southwest Wakita	Okla.	Grant	6 28 63	Iss.
CI63-282 El Paso Natural Gas Co.	Blanco Mesa Verde	N. Mex.	San Juan	1 15 63	Iss.
CI63-311 Arkansas Louisiana Gas Co.	Chenlere Brake	La.	Ouachita	2 27 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Tenneco Corp.—Continued					
CI63-753 Cities Service Gas Co.	Buffalo Area	Okla.	Harper	6 28 63	Iss.
Tenneco Corp., Operator, et al.:					
CI62-895 Lone Star Gas Co.	Katie	Okla.	Garvin	6 28 63	Iss.
CI62-1426 Lone Star Gas Co.	Doyle	Okla.	Stephens	1 21 63	Iss.
Tenneco Oil Co.:					
CI63-195 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	1 21 63	Iss.
CI63-347 Northern Natural Gas Co.	Undesignated	Tex*	Ochiltree*	2 27 63	Iss.
CI63-551 Cities Service Gas Co.	Northeast Vining	Okla.	Grant	3 12 63	Iss.
CI63-901 El Paso Natural Gas Co.	Flora Vista Area*	N. Mex.	San Juan	6 26 63	Iss.
Tenneco Oil Co., Operator.:					
CI62-1059 El Paso Natural Gas Co.	Gallegos Fork Area Dakota Formation.	N. Mex.	San Juan	4 3 63	Iss.
Tenneco Oil Co., Operator, et al.:					
CI62-2153 Arkansas Louisiana Gas Co.	Centrahoma	Okla.	Coal	6 21 63	Iss.
Tennessee-Texan Oil Co.:					
G-16867 United Gas Pipe Line Co.	Corpus Christi Northwest.	Tex.	Nueces	4 22 63	Iss.
Tex-Star Oil & Gas Corp., et al.:					
CI61-344 Lo-Vaca Gathering Co.	Undesignated	Tex.	Calhoun	3 11 63	Wtd.
CI61-400 Lo-Vaca Gathering Co.	Undesignated	Tex.	Live Oak	3 19 63	Wtd.
Texaco Inc.:					
G-19018 United Gas Pipe Line Co.	Corpus Christi Northwest.	Tex.	Nueces	4 22 63	Iss.
G-20460 Coastal Transmission Corp.	Traylor Island	Tex.	Nueces	3 19 63	Wtd.
CI61-119 Natural Gas Pipeline Co. of America	Kelsey*	Tex.	Jim Wells	3 27 63	Iss.
CI62-280 Valley Gas Transmission, Inc.	Pheasant*	Tex.	Matagorda	5 17 63	Iss.
CI63-55 Arkansas Louisiana Gas Co.	West Marlow	Okla.	Stephens	1 21 63	Iss.
CI63-266 Texas Eastern Transmission Corp.	Rollings Hills	Tex.	Nueces	1 15 63	Iss.
CI63-349 Panhandle Eastern Pipe Line Co.	South Kismet	Kans.	Seward	2 27 63	Iss.
CI63-374 Panhandle Eastern Pipe Line Co.	Mohler	Kans.	Mead	2 27 63	Iss.
CI63-397 Lone Star Gas Co.	Stage Stand Southeast	Okla.	Stephens	2 27 63	Iss.
CI63-688 Mountain Fuel Supply Co.	State Line	Wyo.	Carbon*	4 22 63	Iss.
Texaco Seaboard, Inc.:					
CI61-118 Natural Gas Pipeline Co. of America.	Encino*	Tex.	San Patricio	3 27 63	Iss.
Texas City Refining, Inc., Operator, et al.:					
CI63-745 Coastal States Producing Co.	East Mathis	Tex.	San Patricio	6 26 63	Iss.
Texas Imperial Oil & Gas Co.:					
CI62-910 Texas Gas Corp.	Big Hill	Tex.	Jefferson	4 3 63	Iss.

See footnotes at end of table, p. 1858.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Texas Pacific Coal and Oil Co.:					
CI62-1234 Phillips Petroleum Co.	South Field	Tex.	Upton	6 28 63	Iss.
CI62-1237 El Paso Natural Gas Co.	Jalmat	N. Mex.	Lea	6 28 63	Iss.
CI62-1344 El Paso Natural Gas Co.	Undesignated	N. Mex.	Lea	6 28 63	Iss.
Texoma Production Co.:					
CI63-953 Panhandle Eastern Pipe Line Co.	West Taloga	Okla.	Dewey	3 14 63	Rej.
The Texstar Corp.:					
CI62-483 Texas Eastern Transmission Corp.	Weesatche	Tex.	Goliad	3 21 63	Iss.
Texstar Securities, Inc., et al.:					
CI63-963 Hope Natural Gas Gas Co.	Glenville District	W. Va.	Gilmer	6 26 63	Iss.
Harl R. Thomas, et al.:					
CI61-351 United Gas Pipe Line Co.	Bloomington	Tex.	Victoria	5 29 63	Iss.
Dale M. Thompson, Operator, et al.:					
CI62-1255 El Paso Natural Gas Co.	Spraberry	Tex.	Reagan	2 15 63	Iss.
Tidewater Oil Co.:					
G-13824 Southern Natural Gas Co.	Gwinville	Miss.	Jefferson Davis	4 30 63	Wtd.
G-16908 United Gas Pipe Line Co.	Corpus Christi Northwest.	Tex.	Nueces	4 22 63	Iss.
G-19719 Tennessee Gas Transmission Co.	Grand Isle Area	La.	Offshore	6 28 63	Iss.
CI63-557 Northern Natural Gas Co.	East Holland*	Okla.	Beaver	6 26 63	Iss.
CI63-582 Valley Gas Transmission, Inc.	West Dinero	Tex.	Live Oak	5 17 63	Iss.
CI63-650 Natural Gas Pipeline Co. of America.	East Bay City Field	Tex.	Matagorda	3 12 63	Iss.
CI63-780 Texas Eastern Transmission Corp.	Warmsley	Tex.	Dewitt	5 17 63	Iss.
Toto Gas Co.:					
CI63-698 Wunderlich Development Co.	Southeast Autwine	Okla.	Kay	6 6 63	Iss.
Toto Gas Co., et al.:					
CI62-1322 Wunderlich Development Co.	Southwest Autwine	Okla.	Kay	6 28 63	Iss.
J. C. Trahan, Drilling Contractor, Inc.:					
CI63-943 Texas Gas Transmission Corp.	West Simsboro	La.	Lincoln	6 26 63	Iss.
CI62-713 United Gas Pipe Line Co.	Pistol Ridge	Miss.	Pearl River	1 21 63	Iss.
Trans Gas Pipeline Corp., Operator:					
CI60-678 Coastal States Gas Producing Co.*	Burkhart	Tex.	Duval	5 29 63	Iss.
Arnold M. Travis, Operator, et al.:					
CI63-841 Natural Gas Pipeline Co. of America.	Spearman North	Tex.	Hansford	6 18 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Trio Oil & Gas Co., Inc.:					
CI63-324 Hope Natural Gas Co.	New Milton District.	W. Va.	Doddridge	2 27 63	Iss.
CI63-974 Hope Natural Gas Co.	New Milton District.	W. Va.	Doddridge	6 26 63	Iss.
CI64-135 Equitable Gas Co.	Southwest District.	W. Va.	Doddridge	6 6 63	Iss.
Twin Gas Co., Operator:					
CI63-394 Lone Star Gas Co.	Foc Plant	Okla.	Carter	3 12 63	Iss.
CI63-566 Lone Star Gas Co.	Palacine Plant	Okla.	Stephens	3 12 63	Iss.
Rip C. Underwood, Operator:					
CI63-161 Phillips Petroleum Co.	West Panhandle	Tex.	Hutchinson	2 4 63	Wtd.
Wayne Underwood:					
CI63-619 Equitable Gas Co.	West Union District.	W. Va.	Doddridge	5 17 63	Iss.
Union Drilling, Inc.:					
CI63-6 Equitable Gas Co.	Skin Creek District.	W. Va.	Lewis	5 29 63	Iss.
CI63-662 Cumberland & Allegheny Gas Co.	Banks District	W. Va.	Upshur	5 17 63	Iss.
CI63-663 Cumberland & Allegheny Gas Co.	Banks District	W. Va.	Upshur	5 17 63	Iss.
CI63-665 Cumberland & Allegheny Gas Co.	Warren District	W. Va.	Upshur	5 17 63	Iss.
CI63-840 Cumberland & Allegheny Gas Co.	Warren District	W. Va.	Upshur	5 17 63	Iss.
Union Drilling, Inc., et al.[2]					
CI63-644 Cumberland & Allegheny Gas Co.	Banks District	W. Va.	Upshur	5 17 63	Iss.
CI63-645 Cumberland & Allegheny Gas Co.	Warren District	W. Va.	Upshur	5 17 63	Iss.
CI63-646 Cumberland & Allegheny Gas Co.	Banks District	W. Va.	Upshur	5 17 63	Iss.
CI63-653 Cumberland & Allegheny Gas Co.	Banks District	W. Va.	Upshur	5 17 63	Iss.
CI63-654 Cumberland & Allegheny Gas Co.	Warren District	W. Va.	Upshur	5 17 63	Iss.
CI63-659 Cumberland & Allegheny Gas Co.	Warren District	W. Va.	Upshur	5 17 63	Iss.
CI63-660 Cumberland & Allegheny Gas Co.	Union District	W. Va.	Barbour	5 17 63	Iss.
CI63-676 Cumberland & Allegheny Gas Co.	Warren District	W. Va.	Upshur	5 17 63	Iss.
Union Producing Co.:					
G-14306 Louisiana Nevada Transit Co.	Cotton Valley	La.	Webster	4 3 63	Dis.
CI63-714 Texas Eastern Transmission Corp.	Platt	Tex.	Angelina	6 6 63	Iss.
Union Texas Petroleum, a Division of Allied:					
G-14309 El Paso Natural Gas Co.	Blinebry	N. Mex.	Lea	6 19 63	Iss.
CI60-276 Cities Service Gas Co.	Moore	Okla.	Cleveland	6 28 63	Iss.
CI63-213 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	1 21 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[#] DOCKET NO. AND PURCHASER [#]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [2]
United Co., Agent:					
CI61-1352 Valley Gas Transmission, Inc.	North Magnolia	Tex	Jim Wells	5 20 63	Iss.
United Producing Co., Inc.:					
CI60-350 El Paso Natural Gas Co.	Clear Lake	Okla	Beaver	6 19 63	Iss.
U.S. Natural Gas Corp., Operator, et al.:					
CI62-594 Mountain Fuel Supply Co.	Joyce Creek Area	Wyo	Sweetwater	1 15 63	Iss.
U.S. Oil of Louisiana, Inc., Operator, et al.:					
CI60-399 Tennessee Gas Transmission Co.	Larose	La	LaFourche	5 29 63	Iss.
Valley Gas Prod., Inc.:					
CI62-1053 Valley Gas Transmission, Inc.	Whitted	Tex	Hidalgo	4 3 63	Iss.
Van-Grisso Oil Co.:					
CI63-1204 Panhandle Eastern Pipe Line Co.	Undesignated	Okla	Woods	4 5 63	Rel.
Alice M. Vandergrift:					
CI62-1207 Hope Natural Gas Co.	Murphy District	W. Va	Ritchie	6 28 63	Iss.
Jack Voyles and James Norris:					
CI63-333 Equitable Gas Co	Glenville District	W. Va	Gilmer	2 27 63	Iss.
A. H. Wadsworth, Jr.:					
CI63-145 Tennessee Gas Transmission Co.	Nada	Tex	Wharton*	6 6 63	Iss.
Weir Walker, et al.:					
CI62-649 Hope Natural Gas Co.	Cass District	W. Va	Monongalia	2 27 63	Iss.
W. E. Walker:					
CI60-39 Michigan-Wisconsin Pipe Line Co.	Laverne	Okla	Harper	6 18 63	Iss.
Tommy Ward Drilling Co.:					
CI63-114 Northern Natural Gas Co.	Como Area	Okla	Beaver	6 6 63	Iss.
E. C. Ware, et al.:					
CI63-216 United Fuel Gas Co.	Appalachian	Ky	Martin	5 17 63	Iss.
Warren Petroleum Corp.:					
CI63-343 Arkansas Louisiana Gas Co.	Chenier Brake	La	Ouachita	2 27 63	Iss.
Dorothea Webber:					
CI62-1263 Hope Natural Gas Co.	Centerville District	W. Va	Tyler	6 28 63	Dis.
Welsh Oil & Gas, et al.:					
CI63-705 Valley Gas Transmission, Inc.	Old Refugio	Tex	Refugio	6 26 63	Iss.
Westhoma Oil Co.:					
CI62-991 Northern Natural Gas Co.	Camerick	Okla	Texas	4 3 63	Iss.
Olin B. Wetzel, et al.:					
CI62-1266 Hope Natural Gas Co.	Cove District	W. Va	Doddridge	6 28 63	Iss.
Douglas Whitaker, Operator:					
CI63-270 Texas Gas Transmission Corp.	Sugar Creek	La	Claiborne	1 15 63	Iss.
Blanche N. White:					
G-7187 Texas Eastern Transmission Corp.	Delhi	La	Richland	6 14 63	Wtd.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER[3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Izetta White:					
G-7189 Texas Eastern Transmission Corp.	Delhi	La.	Richland	6 14 63	Wtd.
Robert F. White, Operator, et al.:					
CI62-497 Northern Natural Gas Co.	McKinney	Kans.	Clark	6 28 63	Iss.
CI63-362 Colorado Interstate Gas Co.	Undesignated	Kans.	Haskell	2 27 63	Iss.
T. J. White, Jr.:					
G-7186 Texas Eastern Transmission Corp.	Delhi	La.	Richland	6 14 63	Wtd.
Whitehall Oil Co., Inc.:					
CI62-153 Panhandle Eastern Pipe Line Co.	S. W. Anadarko Basin.	Okla.	Beaver	1 15 63	Iss.
CI63-152 Cities Service Gas Co.	N. W. Quinland	Okla.	Woodward	1 15 63	Iss.
Lester Wilkonson, Operator, et al.:					
CI63-682 Kansas-Colorado Utilities, Inc.	Hugoton	Kans.	Grant	6 6 63	Iss.
Williams Brothers Co.:					
CI63-202 El Paso Natural Gas Co.	Spraberry Area	Tex.	Reagan	3 12 63	Iss.
Elizabeth Joanne Turner Williams:					
CI62-1030 El Paso Natural Gas Co.	Blanco	N. Mex.	San Juan	4 3 63	Iss.
Marvin Willig, et al.:					
G-14168 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	5 20 63	Iss.
Wilshire Oil Co. of Texas, Agent:					
CI63-23 El Paso Natural Gas Co.	North Heiner Area	Tex.	Pecos	6 6 63	Iss.
W. C. Wilson, Agent:					
CI62-384 Hope Natural Gas Co.	Center District	W. Va.	Gilmer	2 27 63	Iss.
CI63-323 Hope Natural Gas Co.	Sherman District	W. Va.	Calhoun	2 27 63	Iss.
Woods Exploration & Products Co., Inc., Operator, et al.:					
CI63-274 Texas Eastern Transmission Corp.	Doehrman	Tex.	Dewitt	1 15 63	Iss.
Woods Petroleum Corp.:					
CI63-41 Arkansas Louisiana Gas Co.	Undesignated	Okla.	Grady	1 21 63	Iss.
Worldwide Petroleum Corp.:					
CI63-543 Hope Natural Gas Co.	Greenbrier District	W. Va.	Doddridge	2 27 63	Iss.
Worldwide Petroleum Corp., Operator, et al.:					
CI63-268 Cities Service Gas Co.	Beaver	Okla.	Stephens	6 6 63	Iss.
Charles B. Wrightsman:					
CI63-44 Hope Natural Gas Co.	South Rayne	La.	Acadia	1 21 63	Iss.
Wyatt-Boggs, et al.:					
CI62-1055 Hope Natural Gas Co.	Buch District	W. Va.	Braxton	4 3 63	Iss.

See footnotes at end of table, p. 1358.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
George L. Yaste:					
CI63-507 Hope Natural Gas Co.	Union District	W. Va	Ritchie	3 12 63	Iss.
CI63-655 Equitable Gas Co	Clay District	W. Va	Ritchie	3 12 63	Iss.
CI63-1082 Hope Natural Gas Co.	Union District	W. Va	Ritchie	6 18 63	Iss.
Yingling Oil, Inc.:					
CI63-697 Cities Service Gas Co.	Southeast Guymon Pool.	Okla	Texas	5 17 63	Iss.
Yost & Yost, Inc.:					
CI63-309 Hope Natural Gas Co.	Freemans Creek District.	W. Va	Lewis	2 27 63	Iss.
Lloyd V. Youmans:					
CI61-200 Gas Transmission, Inc.	Undesignated	Kans	Cowley	6 28 63	Iss.
Helen F. Young, et al.:					
CI63-475 Hope Natural Gas Co.	McKim District	W. Va	Pleasants	2 27 63	Iss.
L. S. Youngblood, Operator, et al.:					
CI63-826 Cities Service Gas Co.	Undesignated	Okla	Grant	6 26 63	Iss.
CI63-986 Cities Service Gas Co.	Undesignated	Okla	Woods	6 26 63	Iss.
H. B. Zachry Co., Operator, et al.:					
G-19546 Texas Eastern Transmission Corp.*	Mineral Unit	Tex	Bee	5 20 63	Iss.
CI61-212 Valley Gas Transmission, Inc.	Terrell Point Area	Tex	Goliad	5 17 63	Iss.

See footnotes at end of table, p. 1358.

PRODUCER APPLICATIONS FOR ABANDONMENT OF SERVICE DISPOSED OF DURING THE PERIOD JANUARY 1, 1963 THROUGH JUNE 30, 1963

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
AGSCO Minerals Corp.:					
CI63-294 United Gas Pipe Line Co.	Refugio	Tex	Refugio	3 20 63	Iss.
Alco Oil & Gas Corp., Operator, et al.:					
CI62-706 El Paso Natural Gas Co.	Recapture Creek Area.	Utah	San Juan	5 17 63	Iss.
Mark Edwin Andrews, Operator, et al.:					
CI63-338 Texas Eastern Transmission Corp.	Dallas Husky	Tex	Goliad	6 14 63	Iss.
W. H. Appell, Operator et al.:					
CI63-275 Gas Gathering Co.	East Mathis	Tex	San Patricio	3 20 63	Iss.
The Atlantic Refining Co.:					
CI63-515 United Gas Pipe Line Co.	Koontz	Tex	Victoria	4 24 63	Iss.
CI63-560 Cities Service Gas Co.	Undesignated	Okla	Lincoln	3 20 63	Iss.
Balltown Oil & Gas Co.:					
CI63-140 Hope Natural Gas Co.	Mannington District.	W. Va	Marion	6 14 63	Iss.
CI63-141 Hope Natural Gas Co.	Simpson District	W. Va	Harrison	6 14 63	Iss.
CI63-142 Hope Natural Gas Co.	Clay District	W. Va	Harrison	6 14 63	Iss.
Barnhart Hydrocarbon Corp.:					
CI61-1548 El Paso Natural Gas Co.	Barnhart Gasoline Plant.	W. Va	Reagan	3 21 63	Dis.
Benedum-Trees Oil Co., Operator, et al.:					
CJ61-575 Panhandle Eastern Pipe Line Co.	Hugoton	Kans	Stevens	4 11 63	Iss.
Roy H. Bettis & Frederick Shepherd:					
CI61-1005 Coastal States Gas Producing Co.	Beasley Area	Tex	San Patricio	6 14 63	Iss.
Black & Pridemore Gas Co.:					
CI62-1142 United Fuel Gas Co.	Duval District	W. Va	Lincoln	3 12 63	Iss.
Bradco Properties, Inc.:					
CI63-477 Transcontinental Gas Pipe Line Corp.	Grand Coulee	La	Acadia	3 20 63	Iss.
Estate of J. W. Braden:					
G-20322 Kansas-Nebraska Natural Gas Co., Inc.	Undesignated	Colo	Logan	6 14 63	Iss.
Bridwell Oil Co.:					
CI61-724 Transwestern Pipeline Co.	Undesignated	Tex	Hansford	6 14 63	Iss.
Cabot Corp.:					
CI62-576 Hope Natural Gas Co.	Glasgow	W. Va	Kanawha	3 12 63	Iss.
CI62-1524 New York State Natural Gas Corp.	Benezette	Pa	Cameron*	6 14 63	Iss.
Alec Carpenter Oil & Gas Co.:					
CI63-793 Hope Natural Gas Co.	Sheridan District	W. Va	Calhoun	4 24 63	Iss.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Carri Oil & Hawn Brothers:					
CI63-440 South Texas Natural Gas Gathering Co.	Bob Cooper	Tex.	Brooks	3 20 63	Iss.
Champlin Oil & Refining Co.:					
G-18308 Northern Natural Gas Co.	Perryton	Tex.	Ochiltree	6 19 63	Iss.
Champlin Oil & Refining Co., Operator, et al.:					
CI63-837 Tennessee Gas Transmission Co.	Sullivan City Area	Tex.	Starr*	4 24 63	Iss.
W. A. Clark, Jr., Operator, et al.:					
G-19126 Trunkline Gas Co.	Maetze Frio*	Tex.	Goliad	5 20 63	Dis.
Leo Clymore, Administrator:					
CI63-812 Trunkline Gas Co.	Colettoville	Tex.	Victoria*	4 24 63	Iss.
S. D. Coss, et al.:					
CI61-1683 Hope Natural Gas Co.	Meade District	W. Va.	Tyler	1 8 63	Iss.
Edwin L. Cox:					
CI63-241 Natural Gas Pipe-Line Co. of America.	Claybrook Unit	Okla.	Beaver	6 14 63	Iss.
Craddock Gas Co.:					
CI63-492 South Penn Oil Co.	Sheridian	W. Va.	Lincoln	3 20 63	Iss.
James M. Cunningham:					
CI63-457 Texas Gas Transmission Corp.	Bayou Mollet	La.	Acadia	3 20 63	Iss.
William K. Davis:					
CI63-484 Trunkline Gas Co.	Southeast Alice	Tex.	Jim Wells	4 24 63	Iss.
Roscoe Dingess, Jr., et al.:					
CI63-9 Hope Natural Gas Co.	Clearfork District	W. Va.	Wyoming	6 14 63	Iss.
Diversa, Inc.:					
CI63-261 Southern Natural Gas Co.	East Bayou	La.	Iberia	6 14 63	Iss.
James P. Droppleman, et al.:					
CI63-862 Hope Natural Gas Co.	Central District	W. Va.	Doddridge	6 14 63	Iss.
Durham Drilling Co., Inc., Operator, et al.:					
CI63-573 Northern Natural Gas Co.	Undesignated	Tex.	Ochiltree	3 20 63	Iss.
Eason Oil Co., Operator, et al.:					
CI63-399 Texas Gas Transmission Corp.	Iota	La.	Acadia	6 14 63	Iss.
Hayward Ellison Gas Co.:					
CI63-924 South Penn Oil Co.	DeKalb District	W. Va.	Gilmer	6 14 63	Iss.
Flint Rock Gas & Oil Co.:					
CI63-117 United Fuel Gas Co.	Curtis District	W. Va.	Roane	6 14 63	Iss.
Paul J. Fly, et al.:					
CI63-717 United Gas Pipe Line Co.	Albrecht	Tex.	Goliad	4 24 63	Iss.
Paul J. Fly Oper., et al.:					
CI63-718 United Gas Pipe Line Co.	Bloomington	Tex.	Victoria	4 24 63	Iss.
J. D. Foley:					
CI63-461 Hope Natural Gas Co.	West Union District.	W. Va.	Doddridge	3 20 63	Iss.
Forest Oil Corp., et al.:					
CI62-1102 Transcontinental Gas Pipe Line Corp.	Pinebluff	La.	Acadia	3 12 63	Iss.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,[1] DOCKET NO. AND PURCHASER [2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[3]
Grant G. Fowler, et al.:					
CI62-1541 Hope Natural Gas Co.	Center District	W. Va.	Gilmer	6 14 63	Iss.
Jules C. Franks, et al.:					
CI63-630 Hope Natural Gas Co.	DeKalb District	W. Va.	Gilmer	6 14 63	Iss.
General Oil Co. Inc., et al.:					
CI63-733 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	4 24 63	Iss.
CI63-734 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	4 24 63	Iss.
The Gilmer Oil Co.:					
CI63-720 Lone Star Gas Co.	Cruce	Okla.	Stephens	6 14 63	Iss.
Grace Oil Co.:					
CI63-407 Tennessee Gas Transmission Co.	Blanco Creek	Tex.	Refugio	3 12 63	Iss.
Graham-Michaelis Drilling Co.:					
CI63-550 Kansas-Nebraska Natural Gas Co. Inc.	Undesignated	Colo.	Logan	3 12 63	Iss.
Graridge Corp:					
G-15164 C. V. Lyman	Bentonville	Tex.	Jim Wells	5 1 63	Dis.
Raymond F. Gray:					
CI63-776 Hope Natural Gas Co.	Grant District	W. Va.	Ritchie	4 24 63	Iss.
E. L. Green, Jr.:					
CI63-344 Phillips Petroleum Co.	West Panhandle	Tex.	Hutchinson	6 26 63	Iss.
Gregg Farm Gas Co.:					
CI63-727 Hope Natural Gas Co.	Lafayette District	W. Va.	Pleasant	4 24 63	Iss.
Carola A. Grothe, et al.:					
G-19784 Hope Natural Gas Co.	New Milton District.	W. Va.	Doddridge	5 29 63	Iss.
Guest & Moler Oil Co., et al.:					
CI62-1278 The Manufactures Light & Heat Co.	Benezette	Pa.	Elk	4 17 63	Iss.
Gulf Interstate Oil Co.:					
CI62-1178 Transcontinental Gas Pipe Line Corp.	South Crowley Area.	La.	Acadia	3 12 63	Iss.
Gulf Oil Corp.:					
CI63-63 Montana-Dakota Utilities Co.	Fourteen Mile Unit.	Wyo.	Washakie	6 14 63	Iss.
CI63-441 Panhandle Eastern Pipe Line Co.	West Panhandle	Tex.	Hutchinson	6 26 63	Iss.
Gulf Oil Corp., Operator, et al.:					
CI63-74 United Fuel Gas Co.	Northeast Rayne	La.	Acadia	4 24 63	Iss.
Joseph H. Hager, et al.:					
CI63-878 Hope Natural Gas Co.	Washington District.	W. Va.	Calhoun	6 14 63	Iss.
Michel T. Halbouty:					
CI63-236 Texas Eastern Transmission Corp.	South Garwood	Tex.	Colorado	3 20 63	Iss.
Frederick C. and Ferris F. Hamilton:					
CI60-786 Transwestern Pipeline Co.	Lipscomb	Tex.	Lipscomb	6 14 63	Iss.
Don W. Hardman:					
CI63-972 Hope Natural Gas Co.	Union District	W. Va.	Ritchie	6 14 63	Iss.

See footnotes at end of table, p. 1358.

ABANDONMENT APPLICATIONS—Continued

PRODUCER[S], DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Glenn L. Haught, et al.:					
CI63-773 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	4 24 63	Iss.
W. H. Hunt:					
CI62-1039 United Gas Pipe Line Co.	West Oretta	La.	Beauregard	3 12 63	Iss.
William Herbert Hunt Trust Estate:					
CI63-209 Texas Eastern Transmission Corp.	Puerto Bay	Tex.	Aransas	6 14 63	Iss.
Hydrocarbon Chemicals, Inc.:					
CI63-504 Hope Natural Gas Co.	Court House District.	W. Va.	Lewis	3 20 63	Iss.
CI63-506 Hope Natural Gas Co.	Court House District.	W. Va.	Lewis	3 20 63	Iss.
Inco 3, Inc.:					
CI63-825 Hope Natural Gas Co.	Union District	W. Va.	Ritchie	4 24 63	Iss.
Jefferson County Gas Co.:					
CI63-641 Pennsylvania Gas Co.	Undesignated	Pa.	Elk	3 12 63	Iss.
Jones-O'Brien, Inc., et al.:					
CI62-1399 Texas Eastern Transmission Corp.	Ruston	La.	Lincoln	6 14 63	Iss.
G. E. Kadane & Sons, et al.:					
CI63-419 El Paso Natural Gas Co.	South Rangley	Colo.	Rio Blanco	3 20 63	Iss.
Katex Oil Co.:					
CI63-564 Panhandle Eastern Pipe Line Co.	West Panhandle	Tex.	Hutchinson	6 26 63	Iss.
Kidd Oil & Gas Co.:					
CI62-1421 Godfrey L. Cabot, Inc.	Undesignated	W. Va.	Gilmer	3 22 63	Rej.
C. O. Killingsworth Gas Co.:					
CI61-1520 Equitable Gas Co.	Kanawha District	W. Va.	Gilmer	1 8 63	Iss.
King & Zogg Gas Co.:					
CI62-1260 Hope Natural Gas Co.	Center District	W. Va.	Gilmer	3 12 63	Iss.
CI62-1261 Hope Natural Gas Co.	Center District	W. Va.	Gilmer	3 12 63	Iss.
Eddie A. Kirby:					
CI63-988 Cabot Corp.	Lee District	W. Va.	Calhoun	6 14 63	Iss.
Kirby Petroleum Co., Operator, et al.:					
CI63-868 United Gas Pipe Line Co.	Keeran Ranch Lease.	Tex.	Victoria	4 24 63	Iss.
CI63-423 Phillips Petroleum Co.	West Panhandle	Tex.	Hutchinson	6 26 63	Iss.
CI63-424 Phillips Petroleum Co.	West Panhandle	Tex.	Hutchinson	6 26 63	Iss.
T. Minter Lawson & Mary L. Lawson:					
CI63-910 Hope Natural Gas Co.	Elk District	W. Va.	Harrison	6 14 63	Iss.

See footnotes at end of table, p. 1358.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Lecuno Oil Corp.:					
CI63-765 Mississippi River Fuel Corp.	Waskom	Tex	Harrison	5 3 63	Wtd.
Lefforge & Klein:					
CI63-679 Panhandle Eastern Pipe Line Co.	West Panhandle	Tex	Hutchinson	6 26 63	Iss.
Philip Lemon, et al.:					
CI62-1190 Hope Natural Gas Co.	Union District	W. Va	Ritchie	3 12 63	Iss.
Little Five Oil & Gas Co.:					
CI63-237 Hope Natural Gas Co.	McClellan District	W. Va	Doddridge	6 14 63	Iss.
CI63-238 Hope Natural Gas Co.	McClellan District	W. Va	Doddridge	6 14 63	Iss.
CI63-239 Hope Natural Gas Co.	McClellan District	W. Va	Doddridge	6 14 63	Iss.
Luray Land, Inc.:					
CI63-143 Hope Natural Gas Co.	Courthouse District	W. Va	Lewis	6 14 63	Iss.
CI63-460 Hope Natural Gas Co.	Courthouse District	W. Va	Lewis	3 20 63	Iss.
Lyons & Logan, Operator, et al.:					
CI62-1277 Tennessee Gas Transmission Co.	Carthage	Tex	Panola	2 27 63	Iss.
CI63-605 Texas Gas Transmission Corp.	North Elton	La	Allen	3 12 63	Iss.
W. C. McBride, Inc.:					
CI63-804 Cities Service Gas Co.	Tonkawa-South	Okla	Noble	6 14 63	Iss.
W. C. McBride, Inc., et al.:					
CI63-809 United Gas Pipe Line Co.	West Weesatche	Tex	Goliad	4 24 63	Iss.
McCune Oil & Gas Co.:					
CI61-1419 Godfrey L. Cabot, Inc.	Undesignated	W. Va	Calhoun	3 22 63	Rej.
Marlin Exploration Inc., Operator, et al.:					
CI62-1379 Southern Natural Gas Co.	Millhaven	La	Ouachita	4 24 63	Iss.
Mid-Eastern Gas Co., Inc.:					
CI62-1071 Hope Natural Gas Co.	Paw Paw District	W. Va	Marion	3 12 63	Iss.
Middle Run Oil & Gas Co.:					
CI62-1420 Godfrey L. Cabot, Inc.	Undesignated	W. Va	Gilmer	3 22 63	Rej.
Midland Petrochemical Co.:					
G-20265 Texas Gas Transmission Corp.	Monroe	La	Ouachita	2 21 63	Iss.
G-20266 Olin Gas Transmission Corp.	Monroe	La	Union	2 21 63	Iss.
G-20267 Southern Natural Gas Co.	Monroe	La	Ouachita	2 21 63	Iss.
G-20268 Olin Gas Transmission Corp.	Monroe	La	Ouachita	2 21 63	Iss.
George W. Miller, et al.:					
CI63-427 Equitable Gas Co	Stewarts Creek	W. Va	Gilmer	3 20 63	Iss.
CI63-430 Hope Natural Gas Co.	Leading Creek	W. Va	Gilmer	3 20 63	Iss.
Millstone Development Co.:					
CI62-1484 Hope Natural Gas Co.	Lee District	W. Va	Calhoun	6 14 63	Iss.

See footnotes at end of table, p. 1358.

ABANDONMENT APPLICATIONS—Continued

PRODUCER, # DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Mohawk Gas & Oil Producers:					
CI62-616 Hope Natural Gas Co.	Union District	W. Va.	Wood	1 8 63	Iss.
M. J. Moran:					
CI62-937 Equitable Gas Co.	Court House District.	W. Va.	Lewis	3 12 63	Iss.
CI62-963 Equitable Gas Co.	Glenville District	W. Va.	Gilmer	3 12 63	Iss.
M. J. Moran, et al.:					
CI63-379 Hope Natural Gas Co.	Freemans Creek District.	W. Va.	Lewis	3 20 63	Iss.
Clem S. Morris, et al.:					
CI63-777 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	4 24 63	Iss.
W. H. Mossor:					
CI63-378 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	3 20 63	Iss.
Nicholas Heirs Oil & Gas Co.:					
CI63-834 Cabot Corp.	Sherman District	W. Va.	Calhoun	6 14 63	Iss.
Nollem Oil & Gas Corp.:					
CI62-970 Cumberland and Allegheny Gas Co.	Mountain Lake Park.	Md.	Garrett	3 12 63	Iss.
Northern Pump Co.:					
CI61-1409 Tennessee Gas Transmission Co.	Texana	Tex.	Jackson	6 14 63	Iss.
Oil Drilling, Inc., et al.:					
CI63-652 Texas Eastern Transmission Corp.	Tide Haven	Tex.	Matagorda	3 20 63	Iss.
Oklahoma Gas & Hydrocarbon Corp.					
CI62-153 Cities Service Gas Co.	Sharon Area	Kans.	Harper*	6 14 63	Iss.
Palo Duro Oil Co., Operator, et al.:					
CI63-164 Phillips Petroleum Co.	West Panhandle	Tex.	Hutchinson	2 8 63	Wtd.
CI63-1069 Panhandle Eastern Pipe Line Co.	West Panhandle	Tex.	Hutchinson	6 26 63	Iss.
Pan American Petroleum Corp.:					
CI62-644 El Paso Natural Gas Co.	Turner Bluff	Utah	San Juan	1 8 63	Iss.
CI63-104 Lone Star Gas Co.	Southwest Velma*	Okla.	Stephens*	6 14 63	Iss.
CI63-513 United Gas Pipe Line Co.	Northeast Lisbon	La.	Claiborne	3 20 63	Iss.
CI63-801 Arkansas Louisiana Gas Co.	Cement	Okla.	Caddo	6 14 63	Iss.
Pan American Petroleum Corp., Operator, et al.:					
CI63-768 Texas Eastern Transmission Corp.	Northeast Lisbon	La.	Claiborne	6 14 63	Iss.
Philip Gas Co.:					
CI62-154 United Fuel Gas Co.	Undesignated	W. Va.	Lincoln	1 8 63	Iss.
Phillips Petroleum Co.:					
CI61-1597 Colorado Interstate Gas Co.	West Panhandle	Tex.	Hutchinson	6 26 63	Iss.
CI62-76 Cabot Corp.	Undesignated	N. Mex.	Lea	4 30 63	Wtd.
CI62-586 El Paso Natural Gas Co.	South Rangely	Colo.	Rio Blanco	1 08 63	Iss.
CI62-921 Kerr-McGee Oil Industries, Inc.	Panhandle	Tex.	Carson	4 29 63	Rej.
CI63-796 United Gas Pipe Line Co.	Old Ingleside	Tex.	San Patricio*	4 24 63	Iss.

See footnotes at end of table, p. 1358.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,[3] DOCKET NO. AND PURCHASER[3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Pontiac Refining Corp.:					
CI63-633 Coastal States Gas Producing Co.	Presnos	Tex.	Jim Wells	4 24 63	Iss.
Powell Oil & Gas Co.:					
CI63-735 Hope Natural Gas Co.	Lee District	W. Va.	Calhoun	4 24 63	Iss.
Price Oil & Gas Co.:					
CI63-736 Hope Natural Gas Co.	Lee District	W. Va.	Calhoun	4 24 63	Iss.
The Pure Oil Co.:					
CI63-157 Cities Service Gas Co.	South Rhodes	Kans.	Barber	3 20 63	Iss.
Bee Quin:					
G-12691 United Gas Pipe Line Co.	South Porter Oil	Tex.	Karnes	5 29 63	Dis.
G-12693 United Gas Pipe Line Co.	South Porter Oil	Tex.	Karnes	6 19 63	Dis.
J. Moses Raad:					
CI63-857 Hope Natural Gas Co.	Ten Mile District	W. Va.	Harrison	6 14 63	Iss.
Morris Rauch, et al.:					
CI62-1174 Transcontinental Gas Pipe Line Corp.	Vinton	La.	Calcasieu	3 12 63	Iss.
Salt Rock Well Service Co.:					
CI63-1024 United Fuel Gas Co.	Barboursville	W. Va.	Cabell	6 14 63	Iss.
Schermerhorn Oil Corp., Operator, et al.:					
CI62-1451 El Paso Natural Gas Co.	Whitten Lease	N. Mex.	Lea	3 20 63	Iss.
H. F. Sears:					
CI62-227 Phillips Petroleum Co.	West Panhandle	Tex.	Hutchinson	6 26 63	Iss.
CI62-981 Phillips Petroleum Co.	West Panhandle	Tex.	Hutchinson	6 26 63	Iss.
CI62-1008 Phillips Petroleum Co.	West Panhandle	Tex.	Hutchinson	6 26 63	Iss.
Selby-Walker Corp.:					
CI60-388 Florida Gas Transmission Co.	East Garcia	Tex.	Starr	6 19 63	Iss.
Shell Oil Co.:					
CI63-520 Texas Eastern Transmission Corp.	Aberdeen	Miss.	Monroe	3 20 63	Iss.
CI63-537 Panhandle Eastern Pipe Line Co.	West Panhandle	Tex.	Hutchinson	6 26 63	Iss.
Shoreline Petroleum Corp.:					
CI63-192 Valley Gas Transmission, Inc.	Wilhelm	Tex.	Goliad	3 20 63	Iss
CI63-210 Cities Service Gas Co.	Yellowstone	Okla.	Woods	6 14 63	Iss.
Shoreline Petroleum Corp., Operator, et al.:					
CI63-136 Texas Eastern Transmission Corp.	West Holly	Tex.	Dewitt	3 20 63	Iss.
Sinclair Oil & Gas Co.:					
CI63-92 El Paso Natural Gas Co.	Undesignated	N. Mex.	Lea	5 29 63	Dis.
CI63-432 Phillips Petroleum Co.	West Panhandle	Tex.	Hutchinson	6 26 63	Iss.
CI63-458 Tennessee Gas Transmission Co.	Gyp Hill	Tex.	Brooks	3 20 63	Iss.

See footnotes at end of table, p. 1358.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Slick Oil Corp.:					
CI63-581 United Gas Pipe Line Co.	Hinkle	Tex.	Harris	4 24 63	Iss.
Slick Oil Corp., Operator, et al.:					
CI63-580 Kansas-Nebraska Natural Gas Co., Inc.	Sterling	Colo.	Logan	3 20 63	Iss.
Smith Gas Co.:					
CI63-728 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	4 24 63	Iss.
Helen Irene Smith:					
G-14172 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	5 20 63	Dis.
Walter E. Smith:					
CI63-861 Hope Natural Gas Co.	Sherman District	W. Va.	Calhoun	6 14 63	Iss.
Socony Mobil Oil Co., Inc.:					
CI63-102 Texas Eastern Transmission Corp.	Gobel	Tex.	Live Oak	3 20 63	Iss.
CI63-616 Lone Star Gas Co.	Fox-Graham	Okla.	Stephen	4 24 63	Iss.
CI63-617 Transcontinental Gas Pipe Line Corp.	Odem	Tex.	San Patricio	4 24 63	Iss.
CI63-788 Cities Service Gas Co.	Elwood	Kans.	Barber	6 14 63	Iss.
Socony Mobil Oil Co., Inc., Operator, et al.:					
CI63-614 Transcontinental Gas Pipe Line Corp.	Louise	Tex.	Wharton	4 24 63	Iss.
Sohio Petroleum Co.:					
CI63-339 United Gas Pipe Line Co.	Fields	La.	Beauregard	3 20 63	Iss.
Southland Royalty Co.:					
CI63-559 El Paso Natural Gas Co.	Undesignated	N. Mex.	Lea	4 24 63	Iss.
Eva Sumpter Gas Co.:					
CI61-499 Equitable Gas Co.	DeKalb District	W. Va.	Gilmer	1 8 63	Iss.
Sunnyland Contracting Co., Inc., Operator, et al.:					
CI63-603 Transcontinental Gas Pipe Line Corp.	Sharon	Miss.	Jones*	4 24 63	Iss.
Sunray DX Oil Co.:					
CI63-154 Cities Service Gas Co.	Undesignated	Kans.	Cowley	6 14 63	Iss.
CI63-467 United Gas Pipe Line Co.	Egan	La.	Acadia	3 20 63	Iss.
The Superior Oil Co.:					
CI62-840 United Gas Pipe Line Co.	Kent Bayou	La.	Terrebonne	3 12 63	Iss.
CI62-1090 United Gas Pipe Line Co.	Lake Hatch	La.	Terrebonne	3 12 63	Iss.
Anthony J. Tamborello, et al.:					
CI62-1172 Transcontinental Gas Pipe Line Corp.	South Bayou Mallet	La.	Acadia	3 12 63	Iss.
Tela Corp.:					
CI62-486 El Paso Natural Gas Co.	Waddell Lease	Tex.	Winkler	4 24 63	Iss.

See footnotes at end of table, p. 1358.

ABANDONMENT APPLICATIONS—Continued

PRODUCER, # DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION	DISPOSITION [1]
Texaco. Inc.:					
G-17856 Warren Petroleum Corp.	Drinkard*	N. Mex.	Lea	3 5 63	Wtd.
CI63-761 Coastal States Gas Producing Co.	West Cologne	Tex.	Victoria	4 24 63	Iss.
CI63-1047 Kansas-Nebraska Natural Gas Co., Inc.	Dale	Colo.	Logan	6 14 63	Iss.
Tidewater Oil Co.:					
CI60-539 Panhandle Eastern Pipe Line Co.	Singley Pool	Kans.	Meade	6 14 63	Iss.
CI62-1040 American Louisiana Gas Pipe Line Co.	North Holly Beach	La.	Cameron	3 12 63	Iss.
CI63-405 United Fuel Gas Co.	Savoy	La.	St. Landry	3 20 63	Iss.
Toto Gas Co.:					
CI63-450 Cities Service Gas Co.	Meridian	Okla.	Logan	3 20 63	Iss.
J. C. Trahan, et al.:					
G-15815 Tennessee Gas Transmission Co.	Bethany	Tex.	Panola	6 19 63	Dis.
G-16001 Tennessee Gas Transmission Co.	Bethany	Tex.	Panola	6 19 63	Dis.
J. C. Trahan Drilling Contractor, Inc., Operator, et al.:					
G-16003 Texas Eastern Transmission Corp.	South Hallsville	Tex.	Harrison	6 19 63	Dis.
Trans Allegheny Gas Co., Inc.:					
CI63-694 Hope Natural Gas Co.	Skin Creek District	W. Va.	Lewis	4 24 63	Iss.
Tri-Mutual Oil Co., et al.:					
CI63-762 Hope Natural Gas Co.	Lincoln District	W. Va.	Tyler	4 24 63	Iss.
Trio Oil & Gas Co., Inc.:					
CI63-32 Hope Natural Gas Co.	Grant District	W. Va.	Doddridge	6 14 63	Iss.
Union Texas Petroleum, a Division of Allied:					
CI63-491 Wunderlich Development Co.	Dilwood*	Okla.	Kay*	3 20 63	Iss.
Vincent & Welch, Inc., Operators, et al.:					
CI63-517 Trunkline Gas Co.	Sweetville	La.	Beauregard	3 20 63	Iss.
W. W. F. Oil Corp., Operator, et al.:					
G-19585 Florida Gas Transmission Co.	Texas Hugoton	Tex.	Moore*	6 19 63	Iss.
C. J. Weidman:					
CI63-511 United Fuel Gas Co.	Champmanville District.	W. Va.	Logan	1 21 63	Iss.
O. K. Wilfong Gas Co.:					
CI61-827 Equitable Gas Co.	Glenville District	W. Va.	Gilmer	1 8 63	Iss.
Weldon O. Winsauer:					
CI63-259 Coastal States Gas Producing Co.	North Mathis	Tex.	San Patricio	6 14 63	Iss.
J. D. Wrather, et al.:					
CI63-716 United Gas Pipe Line Co.	Bloomington	Tex.	Victoria	4 24 63	Iss.

*Indicates that other fields, counties or States are also included.

#Producers' and Purchasers' names may include et al., trustee, agent, or additional names on certain dockets.

[1] Iss., issued; Wtd., withdrawn; Rej., rejected; Dis., dismissed.